SUPREME COURT OF THE UNITED STATES.

No. 263.

THE INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY, APPELLANT,

vs.

HENRIETTA P. SPRAGUE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

	Original.	Print.
Style of court	1	1
Paragraphs 5 and 6 of decree in case of Union Trust Company of New York against Indiana and Illinois Central Railway Company	2	1
Affidavit of Mrs. H. P. Sprague	4	2
" John M. Whiting	6	3
Protest and objections of R. W. Company	8	4
Master's report	11	6
Testimony of Henrietta P. Sprague	19	10
" Henry B. Hammond	42	23
" John E. Risley	58	31
John E. Risley, recalled	72	38
Testimony of John M. Whiting	86	45
Copy of minutes of board, July 3, 1871	107	54
Testimony of Henry B. Hammond	126	62
Exhibit Z, trust deed Illinois Central R. W. Company to Union Trust Company of New York	144	73
Exceptions to master's report	185	96
Decree	195	101
Appeal	195	101
Appeal bond	197	102
Clerk's certificate	199	102

1 Pleas of the Circuit Court of the United States for the District of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and seventy-four, before the Honorable James C. Hopkins, acting judge of the District Court of the United States for the District of Indiana, and ex-officio judge of said circuit court.

UNION TRUST COMPANY OF NEW YORK
vs.
THE INDIANA AND ILLINOIS CENTRAL Railway Company.
} No. 3,769. Chancery.

Be it remembered, that heretofore, to wit, at the November term of said court, on the 21st day of January, A. D. 1875, before the Honorable James C. Hopkins, acting judge of said court, a decree was duly rendered by said court and entered of record therein in the above-entitled cause, for the foreclosure of a deed of trust or mortgage, made by said Indiana and Illinois Central Railway Company to the said Union Trust Company of New York, as trustee, to secure certain bonds and coupons issued by said railway company, and to enforce certain trusts in said deed of trust or mortgage specified; and that paragraphs 5 and 6, forming a part of said decree, are as follows, to wit:

2 5th paragraph. And whereas the amount of the whole sum due upon all the bonds and coupons issued under said mortgage is undetermined, and may remain undetermined until after the sale hereinbefore provided for, the master is empowered upon such sale to receive for the securing of such sum as may be due and owing out of the proceeds of such sale to the holders of bonds and coupons not so surrendered as purchase-money and payable to them when the distributive shares shall be settled and adjusted as hereafter provided, the bond of the purchaser in such penalty and with such sureties as the master shall deem sufficient, conditioned that such sum as shall be so determined and settled by the court be, on the order of the court, paid promptly into its registry by such purchaser.

6. And touching the outstanding bonds and coupons secured by said deed of trust, the same are referred to said master, who is directed to *to* give public notice, to be published daily for thirty days in a newspaper of general circulation in the city of New York, requiring, within twenty days from the last day of such publication, the holders of all of said bonds and coupons to present their claims for allowance to the master, and leave is reserved to the complainant and such other parties as have an interest in the subject to contest such allowance before the master, and to except to such

3 allowance if made, and the master will report the number

of said bonds and coupons, the amount due thereon, and by whom held, with all convenient speed.

That the following are the proceedings in said above-entitled cause in reference to the claim of Henrietta P. Sprague for the allowance of certain bonds and coupons claimed by her to be owned by her, and to have been issued by said railway company, and to be secured by said deed of trust or mortgage, a decree for the foreclosure of which enforcement of the trusts therein was made as aforesaid, and pertaining to and having reference to the action of the master in chancery of said circuit court, under the reference before authorized by said paragraphs 5 and 6 of said decree and the proceedings before said master and in said circuit court concerning said bonds and coupons, and the defence of said railway company to the allowance of the same.

And afterwards, to wit, at the November term of said court, on the 23d day of April, 1875, the following further proceedings were had in said cause before the master in chancery, to wit:

On reference, April 23, 1875.

On this day, the master not having closed the hearing in this matter, pursuant to notice for presenting bonds on the 14th day of the present month, now comes Henrietta Sprague, by counsel, and offers for proof and deposits certain bonds as held
4 by her absolutely in her own right.

And thereupon her counsel, Mr. Whiting, files her affidavit, claiming 75 bonds, 629 to 703, both inclusive, (and coupons,) and also a certain letter of the trustee, (the Union Trust Company,) dated 21 April, 1875. This affidavit being in the words following, to wit:

Aff't of Mrs. H. P. Sprague.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
CITY, COUNTY, AND STATE OF NEW YORK. } ss.

Henrietta P. Sprague, being duly sworn, deposeth and saith:

I reside at No. 191 Madison avenue, in the city of New York. I am the administratrix of John H. Sprague, deceased, late of said city. I am the owner of seventy-five of the first mortgage bonds of the Indiana and Illinois Central Railway Company. I became such owner bona fide and for a full and valuable consideration in the fall of 1872. The said bonds are secured by a first mortgage, given to the Union Trust Company as trustee, and are numbered respectively from number 629 to number 703, both numbers inclusive. So far as I have any knowledge, information, or belief, the said bonds are valid, and the title to the said bonds is absolute and perfect in me.

The said bonds are now lodged with the Union Trust Company, the complainant, who delivered to me a receipt and certificate for the same. And I have signed the printed agreement of the bondholders, a copy of which was deposited by a committee of said bondholders with said Union Trust Company.

HENRIETTA P. SPRAGUE.

Subscribed and sworn to before me, April 21st, 1875.

[SEAL.] EDWARD L. OWEN,

U. S. Commissioner for the Southern Dist. of New York.

And said letter being in the words following, to wit:

NEW YORK, *April 21st*, 1875.

John D. Howland, Esq., Master, Indianapolis.

DEAR SIR: At the request of Mr. John N. Whiting, in behalf of Mrs. Henrietta P. Sprague, I forward to you to-day, per U. S. express, seventy-five bonds, Nos. 629 to 703, of $1,000 each, with coupons 2–60, of the 1st mortgage of the Indiana and Illinois Central Railway Co., accompanied by an affidavit of ownership executed by Mrs. Sprague, which I beg to present to you for such action as may be needful. I am respectfully, ys.,

EDWARD KING, *Pr.*

I have issued a certificate for receipt of above bonds bearing the following endorsement in red ink: "The title of the depositor to, and validity of the bonds described in this certificate are questioned by the railroad company, and by certain of the holders of other bonds, and this certificate is issued subject to such rights of the parties as shall be established in respect of said bonds.

And afterwards, to wit, at the November term of said court, on the 23d day of April, 1875, the following further proceedings were had in said cause before the master in chancery, to wit:

And also the affidavit of Mr. John N. Whiting, said affidavit being in the words following, to wit:

John N. Whiting, of the city of New York, being duly sworn, saith that he is a counsellor-at-law, and is the attorney and counsel for Mrs. Henrietta P. Sprague, of said city; that he received the $75,000 of bonds of the defendant above named from the Union Trust Company, for the said Henrietta P. Sprague, in the fall of 1872, in exchange for 75 other bonds, of said defendant, of an equal amount, and has represented Mrs. Sprague exclusively in respect of said bonds, and the claims represented by the same; that deponent has no knowledge of the foreclosure and sale under the decree in this suit or the advertisement of said sale until quite recently, when he immediately sought to ascertain the provisions of the decree of sale, and sent for the same to the clerk of this court. That this deponent did not, and he is

informed and believes Mrs. Sprague did not, know or have any information whatever of the provisions of said decree, nor of the advertisement of Hon. John D. Howland, as master, requiring proffer or production of said bonds and proof of claim or ownership of the bonds embraced in the proceedings herein, until the evening of the 17th day of April instant, and he notified Mrs. Sprague on the morning of the 20th day of April instant. Deponent immediately deposited on behalf of Mrs. Sprague, with the Union Trust Company, the said several bonds now in court and the coupons thereon, and took from said company (plaintiffs) the certificate and receipt for $150.00 now produced; that the qualifications and endorsement on said certificate and receipt was placed on the same respectively against this deponent's protest and objection; the signature to the agreement of bondholders now produced was made by Mrs. Sprague in deponent's presence, and is her proper signature. A duplicate of said agreement of bondholders signed by Mrs. Sprague is now deposited with and in possession of said Union Trust Company, the plaintiff.

JOHN M. WHITING.

Subscribed and sworn, April 23, 1875.

J. D. HOWLAND, *Clerk.*

8 And afterwards, to wit, at the November term of said court, on the 23d day of April, 1875, the further following proceedings were had in said cause before the master in chancery, to wit:

And also comes said trustee, the plaintiff herein, by Messrs. McDonald & Butler, its solicitors, and openly waives in the matter of the offer to prove Mrs. Sprague's bonds any objection thereto on the score of time.

And also comes, at the same time, the defendant railway company, by Mr. Macoutry, and files its protest against the reception or allowance of said bonds, on the ground that after the 14th instant the powers of the master in that respect were exhausted, said protest being in the following words, to wit:

Protest and Objections.

Before the Hon. John D. Howland, master in chancery of this court.

In the matter of the offer of Henrietta P. Sprague to present to said master for allowance certain bonds and coupons purporting to be issued by the said defendant, and secured by the deed of trust or indenture of mortgage, for the foreclosure of which a decree has been entered in this cause, the Indiana and Illinois Central Railway Company, the said defendant, protests against the asserted right of the said Henrietta Sprague to present said claim for allowance, and presents the following objections thereto:

9 That the decree rendered and entered of record in this cause, among other things, provides as follows, viz.:

"And touching the outstanding bonds and coupons secured by said deed of trust, the same are referred to said master, who is directed to give public notice, to be published daily for thirty days in a newspaper of general circulation in the city of New York, requiring, within twenty days from the last day of such publication, the holders of all said bonds and coupons to present their claims for allowance to the master, and leave is reserved to the complainant, and such other parties as have an interest in the subject, to contest such allowance before the master, and except to such allowance if made," &c., &c.

That said master did give, pursuant to said decree, notice by publication in the Evening Post, a newspaper of general circulation printed and published in the city of New York, for thirty successive days, which were fully ended and completed twenty days prior to the 14th day of April, A. D. 1875; that on said last-named day, at his office in Indianapolis, he would receive the proofs of bonds, as directed in said order and decree.

That more than twenty days have elapsed since the last day of the publication of said notice.

That said master's powers and duties, under the provisions of said decree, as to the receiving and allowance of claims, is now exhausted.

10 That the said Henrietta P. Sprague has not, previous to this time, offered to said master any proof of being the owner or holder of any bonds secured by said deed of trust, and has not, previous to this time, presented any such bonds to said master for allowance.

That the Indiana and Illinois Central Railway Company, this defendant, claims that Henrietta P. Sprague does not hold any bond secured by said deed of trust, bona fide and for value, but that the title of the said Henrietta P. Sprague to, and the validity of, the bonds described in her certificate are questioned and contested by this defendant.

INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY,
By THOMAS H. MACOUGHTRY,
its Solicitor.

And the master held that the objection on the score of time was insufficient, and, therefore, overruled; and thereupon, by consent of parties, this matter is continued 30 days to enable the said railroad company to present its objections to the validity of said bonds or any defence it has to the same in the hands of Mrs. Sprague.

And afterwards, to wit, at the May term of said court, on the 23d day of October, A. D. 1876, in recess of said court, the follow-

ing further proceedings in the above-entitled cause were had, to wit:

Entry.

11 Comes now the master and files his report and the evidence taken before him on the claim of Mrs. Sprague, and said report is in the words and figures following, to wit:

Master's Report.

To the honorable the judges of said court:

The master, to whom was referred the matter of proof and allowance of bonds in this case, submits his special report upon the claim of Mrs. Sprague.

Mrs. Henrietta P. Sprague, administratrix of the estate of the late John H. Sprague, made her claim in due form under this reference to be allowed for seventy-five mortgage bonds of one thousand dollars each of the issue of the Indiana and Illinois Central Railway Company, being portion of the bonds secured under the mortgage foreclosed in this suit.

Mrs. Sprague has produced her bonds in evidence. They are numbered from 629 to 703, both inclusive, with interest coupons attached.

The Indiana and Illinois Central Railway Company denies the title of Mrs. Sprague.

Evidence was taken by the master in New York and in Indianapolis, both parties being represented on each occasion. It will be found in the packages filed with this report, marked respectively A and B.

The facts in the case are substantially as follows: Mrs. Sprague had certain business transactions with one J. E. Condict.

12 They resulted in a purchase by her from him of 75 one thousand dollar mortgage bonds and coupons of the Madison and Portage Railroad Company. This purchase was substantially concluded in November, 1870. A balance of some $19,000 remained then due to Condict, to secure which she pledged to Condict stock in the Delaware and Lackawanna Railroad Company; shortly before the 1st May following she paid the money and repossessed herself of this stock.

There is nothing in the evidence that affects the title of Mrs. Sprague to the Madison and Portage bonds; she had paid Condict for them $60,000.

About the first of May, 1871, Condict proposed to exchange with Mrs. Sprague for her Madison and Portage bonds an equal number and amount of the bonds of the Indiana and Illinois Central. Condict had been long known to Mrs. Sprague; he had been her husband's friend and enjoyed the confidence of the family. He was a banker and broker in New York; he had received from Mrs. Sprague the equivalent of cash for the Madison and Portage

securities. The motive by which he professed to be influenced in offering to exchange for them the bonds of the Indiana and Illinois Central was that they were the better investment, and he assured her that he felt his obligation to do for her the best thing he could.

Mrs. Sprague advised carefully with her counsel and her business friends, apparently confining her inquiries to the
13 question of value, and on the 24th June, 1871, completed the exchange by giving to Condict the Madison and Portage bonds and receiving from him those of the Indiana and Illinois Central.

The bonds thus received by Mrs. Sprague were part of an issue of $2,750,000 of the date of April 1st, 1870. They are payable to bearer and by their terms pass by delivery and are duly authenticated by the signature of the trustee. The bonds offered for allowance are not the original bonds of April 1st, 1870, they are a later issue which was substituted for all the bonds of the original issue. Mrs. Sprague accepting the substituted bonds under an agreement between the railroad company and herself that the new bonds in her hands are subject to all defences that could have been made to the original bonds delivered to her by Condict.

The legal adviser of Mrs. Sprague was John M. Whiting, esq., of New York. He was consulted by her while the offer to exchange bonds was under consideration. He says he was startled at these transactions. She was dealing in trust funds and he felt at once that she was taking needless risks. He made diligent inquiry as to the bonds of both companies. In the course of his inquiry he heard from one of the officials of the Madison and Portage company that there was trouble between them and Condict, and they charged the latter with having misappropriated
14 the bonds of their company. Mrs. Sprague had then held those bonds for six months. Mr. Whiting declares that he had no doubt of the validity of her title to the Madison and Portage bonds. His inquires as to the bonds offered in exchange seem to have gone chiefly to the question of value, his desire being to secure for his client what was best. He had frequent conversations with Condict and with Mr. Seaman and was told by them of a great many things which they appeared to think made the bonds of the Indiana and Illinois Central a valuable investment, and was also assured by both of the validity of Condict's title. Through his agency the exchange was made on the 24th day of June, 1871.

It is material to know the status of the Indiana and Illinois Central Railway Company and Condict's relation to it during these transactions.

There had been no meeting of the board of directors during the interval between May, 1870, and May, 1871. On May 8, 1871, at a meeting of the directors Mr. Henry B. Hammond was chosen president, J. E. Condict, vice-president, and an executive com-

mittee was appointed, consisting of the president, Condict, Seaman, and Lazare. At the time of his election, Hammond was in California; he did not accept and enter on the duties of his office until July 3d, 1871. Condict, during this interval, was acting president and the chairman of the executive committee. No meeting
15 of the directors took place between May 3 and July 3, 1871, and no meeting of the executive committee between May 3 and September of that year.

At the May meeting, certain by-laws were adopted by the directors, and among them was one empowering the executive committee to exercise all powers that might from time to time be delegated to them by the board of directors. There was also in the new by-laws a clause repealing all former by-laws inconsistent with those then adopted. Among those previously in force was one which conferred on the executive committee all the powers of the board of directors, to be exercised by the committee only when the board shall not be in session.

Of the bonds of April, 1870, but 500 were issued. They were so issued in every respect regularly, and the 75 in question remained in the hands of Condict as "chief executive." His custody of them was lawful.

When the 75 bonds came to the hands of Mrs. Sprague there were attached to each two overdue and unpaid coupons.

It is urged with great earnestness, on behalf of the company, that these bonds were dishonored on the 24th June, 1871; that the overdue coupons were notice of that dishonor and subjected the securities to such defences in the hands of Mrs. Sprague as would have confronted them in the hands of Condict.

16 The courts have abundantly elaborated the doctrine of the negotiability of such paper, and in illustrating and enforcing it have used language quite broad and emphatic. The qualities of commercial paper have been ascribed to it without limitation. But it is to *be* noticed that these declarations of its characteristics are general and have no special authority beyond the point to which they are directed—the importance of including this sort of paper where by the habits and necessities of mankind it belongs, in the great volume of commercial securities upon which the business of the world is floated. The courts were, when so speaking, declaring the way for the circulation of such paper open, rather than defining the limitations under which it should travel.

It is settled law that one is not a bona-fide holder of such paper who buys it overdue. The Supreme Court of the United States has gone to such extreme in Texas v. Hardenburg (10 Wall., 68), as to hold that government bonds were not held in good faith when bought after the date at which they were redeemable; and, in a later case, Vermilye vs. Adams Express Co. (21 Wall., 145), the same court, referring to the former case, says: "We have not quoted the language from the opinion in that case with any view

of affirming it. It may admit of grave doubt whether such bonds, redeemable, but not payable at a certain day, except at the
17 option of the government, do become overdue in the sense of being dishonored if not paid or redeemed on that day." Newell v. Gregg (51 Barbour, 263) is cited for the company, and goes to the length of deciding that upon the sale of a negotiable note for value, the buyer is bound by pre-existing equities, when there is a provision for the payment of interest semi-annually and an instalment of interest is due and unpaid; and 1st Nat. Bank of St. Paul v. Commissioners of Scott Co. (14 Minn., 77), where the same rule is applied in the case of a county bond with due and unpaid coupons attached.

A different conclusion is reached in the case of a negotiable note in Wisconsin. In Boss v. Hewitt (15 Wis., 260), the court says: "Neither do we think that the fact that the interest had not been paid makes the case equivalent to a purchase after maturity so as to let in defences that might have been made against the original parties. The interest is a mere incident to the debt, and although it is frequently provided that it shall be paid at stated periods before the principal falls due, we know of no authorities holding that a failure to pay it dishonors the note so as to let in all defences against subsequent purchasers for value without any other notice of defects, except the mere fact that such interest had not been paid, and we do not think it should have that effect. The
18 maturity of the note, within the meaning of the commercial rule upon this subject is the time when the principal becomes due."

I do not think there is anything in the authorities to warrant the conclusions that the court will ever apply the rule contended for by the company to railroad bonds.

Immense values are involved in this class of securities. They are affected in many instances by peculiar circumstances (which are open and notorious), which prevent the payment of interest, but in no wise indicate the existence of defect of title. To hold that an overdue coupon has this effect is at once to destroy the negotiable quality of every like security in a like condition.

But if the law can be so applied it must be in a different case from this. I think the evidence shows satisfactorily that the railroad company had received nothing from Condict for these bonds, but the company had trusted Condict implicitly. It had given him plenary powers. He was its acting president. As one of its executive committee he was lawfully in possession of these bonds. He was fortified in his claim of title by the assurances of Mr. Seaman, another of the executive committee.

Under these conditions, I think that Mrs. Sprague and her counsel must be held to have made full inquiry. She was dealing with the persons who, by the highest authority, were the very
19 voice and conscience of the company itself.

I, therefore, find that Mrs. Sprague bought these bonds in good faith and for value, and allow her proofs as ample.

All of which is respectfully submitted,

J. M. HOWLAND, *Master.*

INDIANAPOLIS, *Oct.* 31, 1876.

This was marked by master, "Package A," 3,769.

THE UNION TRUST COMPANY OF NEW YORK *agst.* THE INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY. } In chancery.

On hearing of claim of Mrs. Henrietta P. Sprague before master.

NEW YORK, *Jan.* 14, 1876.

Present—J. D. Howland, master; Clarkson N. Potter, for complainant; Thomas H. Macoughtry, for defendant.

HENRIETTA P. SPRAGUE, called as a witness on the part of the defendant, being duly sworn, testified as follows:

Ex'd by Mr. Macoughtry.

Q. What is your name, age, and place of residence, and are you the claimant in this proceeding?

A. No. 191 Madison ave.; H. P. Sprague; my age is 56; I am.

Q. State whether or no you have had in your possession any railway bonds, purporting to be bonds issued by the Indiana and Illinois Central Railway Company, secured by deed of trust bearing date April 1st, 1870. If yea, state how many of such bonds you had, their denomination, the date of their delivery to you, giving the numbers of such bonds if you can.

A. I have seventy-five bonds of one thousand dollars each; the numbers I cannot give you without looking for them, and the exact time without referring to my books; I think I have it on a piece of paper here, though.

Q. You may refresh your recollection from any memorandum you have.

A. (Referring to memorandum.) It is stated here June 24th, 1871.

Q. That is the date of their delivery to you?

A. Yes, sir.

Q. You say you cannot give the numbers of the bonds?

A. No, sir; I cannot. I have it somewhere, but I would not state it without referring. I do not think I have the numbers of the first bonds that I had.

Q. From whom did you obtain the bonds referred to in your last preceding answer?

A. J. Elliott Condict.

Q. Did you know Mr. Condict previous to the date of the delivery of the bonds by him to you?

A. I have known him 25 years.

Q. How long had you known him previous to that time.

A. I knew him before; to say that I knew him 25 years may be an exaggeration, but I knew him some time before. I can't say how long, but it is a long time.

Q. Many years, is it?

21 A. Yes, sir; many years.

Q. What was his business at the time, if you know?

A. He was a banker and broker.

Q. Had you had previous business transactions with Mr. Condict?

A. Yes, sir.

Q. Had you had business transactions with Mr. Condict immediately prior to that time?

A. Nothing more than he had advised me in regard to investments, as a friend. I won't say nothing more, either; because I had made him a loan at one time; but no business transactions except he would come to me and advise me as to what he thought I had better do in making investments. He was my husband's friend before his death.

Q. You say that you made him loans?

A. Yes, sir.

Q. Had those loans been paid prior to the date of the delivery of these bonds?

A. I bought bonds of him, and paid him part in cash and the remainder of the loans were taken up at that time, and the balance I paid in cash and took the bonds.

Q. When was the loan made to him?

A. The first loan, February, 1870.

Q. What was the amount of that loan?

A. Twenty-five thousand.

Q. Was that loan due and unpaid on the 24th day of the following June, the date of the delivery of these bonds?

22 A. The loan was paid in my taking other bonds and then paying the balance on them; it was turned in as payment in that way; I paid the balance in cash.

Q. How was that loan paid?

A. What do you mean; paid in money.

Q. How was the loan of $25,000 paid?

A. The loan went in in part payment of those bonds, and I paid him the remainder in cash. $60,000 was the amount he had in all, and the rest I made up the amount after the loans went in in cash, and paid it and took the bonds.

Q. Well, did Mr. Condict deposit with you any collaterals at that time?

A. When I made the first loan?

Q. Yes.

A. Yes, sir; he gave me his brother's note and two life insurance policies, and those I gave up, of course, when I took the bonds and paid the remainder in cash, and made a settled thing of it, as I thought; finished the thing up.

Q. Was the loan made Mr. Condict money or stocks?

A. They were bonds mostly; just exactly what I loaned him is stated from beginning to end in this paper. My book-keeper some time since made this statement of the transactions by which I got these bonds. This is it (producing paper), and it is correct.

23 The paper is handed to the counsel for the railroad company, who have no objection to its being received as the statement of the witness.

Paper marked by the master, Exhibit "A," in testimony of Mrs. Sprague.

Exhibit A of testimony of Mrs. Sprague.

Statement of the cost of 75 first-mortgage 7 per cent. gold bonds, of $1,000 each, of the Indiana and Illinois Central Railway, showing how they were paid for by the present owner, Henrietta P. Sprague, Adm'n'x.

Feb'y 15, 1870. Took note of J. D. Condict, endorsed by J. E. Condict, for $25,000, dated 15th Feb'y '70, and due May 1st, '71, interest at 7 per cent., secured by policies of insurance on the lives of J. D. and J. E. Condict to the amount of $20,000.

Gave Condict & Co. for the above note:

10 1st mtg. bonds Terre Haute and R. R. R. Co., $10,000, @ 94 per cent.	$9,400 00
5 S. F. B. do. Chicago and N. W. Railway, 5,000 @ 90	4,500 00
6 1st mtg. b'ds Grand River Valley R. R., 6,000, @ 102	6,120 00
100 shares Morris and Essex St. K., 5,000 @ 86¼	4,343 75
Excess of note over proceeds at the above price	636 25
	$25,000 00

Nov. 7th, 1870. Bought of Condict & Co. seventy-five of the 1st mortgage bonds of the Madison and Portage R. R. Co., of $1,000 each, gold, paid 80 per cent. for same as follows:

Gave Condict & Co. J. D. Condict's note, entered above	$25,000 00
Interest on same to date from May 1	923 60
Forward	$25,923 61
Forward	$25,923 61
Nov. 7th, 1870. 1st mtge. bonds Savannah and Charleston R. R. Co., par $15,000, @ 80 per cent.	12,000 00
24 Interest on above bonds from July 1	876 25

1st mtge. bonds of the Union Pacific R. R. Co., par. $8,000, @ 83 per cent.....	2,490 00
Interest on above bonds f'm July 1, 6 per cent. gold, 10 per cent. per annum.....	70 95
And on May 1st,'71, paid Condict & Co. in cash the balance of the purchase-money.....	19,139 19
Total cost of the Madison and Portage bonds.....	$60,000 00

June 24, 1871. Bo't of Condict & Co. 75 1st mtg. S. F. bonds, $1,000 each (gold), of the Indiana and Illinois Central Railway, giving therefor the above 75 1st mort. bonds of the Madison and Portage R. R.

Q. Was this transaction with J. Elliott Condict, or Condict & Co.?

A. J. Elliott Condict. I had nothing to do with anybody except himself.

Q. Did you ever subsequently, or at any time, take any further security for this debt; and if so, what was it?

A. Everything is stated there. There is not a thing but what is in that statement. Everything is there just as plain as I can give it.

Q. Let me refresh your recollections. Did not you take an assignment from J. Elliott Condict of his interest in certain contracts, as a further security for this debt?

A. I have not been thinking of that, sir. I do not know that I can say that. It had no connection with that at all. I do not know how I can place that exactly, because that I considered finished. There was some back interest that he owed me, but that was not in connection with this at all, and he said that I could prosecute that matter better than he could, and he asked me to take that, and so secure this other indebtness through that. It was not these bonds that was all finished up.

Q. What interest do you refer to? Interest upon what?

A. Of some moneys that he had, interest on these back bonds that he had when I exchanged the bonds, there was some interest due on them and he wanted me to do this to secure the interest on those bonds.

Q. Had not Mr. Condict converted these bonds previous to this transaction on the 24th day of June—the Portage bonds?

A. He had taken those. I had given up the Madison and Portage bonds, and I had purchased these in place of them, and the interest due on the other bonds had not been paid, and this he gave me as security for that.

Q. When did you give up the Portage bonds?

A. I gave them up when I took the others—the Indiana bonds.

Q. Did Mr. Condict have the Portage bonds then?

A. No, sir; I had them.

Q. You had them?

A. I had them, and had had them for some time; I don't know how long, and he proposed this would be a better investment than the others, and I at first declined to make the change; but after satisfying myself and talking with some gentlemen, who said the company was a good one, and the gentlemen managing it were
26 good men, I did it. Mr. Wm. E. Dodge and others, Mr. Phileters Holt, Mr. Smith, Mr. Ketcham said they would make the exchange, and I did so, and after the exchange was made then the interest on the other bonds was to be paid, and Mr. Condict had not paid the interest, so he made over the stock to secure it and the rest of the recovery of the railway company, after securing the interest, I was to pay back to him.

Q. (By Mr. Potter.) By the other bonds you mean the Portage bonds?

A. Yes, sir.

Q. And by the exchange you mean the exchange for the Indiana bonds?

A. Yes, sir; I mean the Portage interest had not been paid and I turned them over to him in the exchange.

Q. (By Mr. Macoughtry.) Did you know the market value of these Portage bonds at the time, Mrs. Sprague?

A. It was represented to me by Mr. Condict, whom I had perfect confidence in at the time. I do not know that I had any other means of knowing at the time, he brought me a statement as he did in regard to these likewise.

Q. That is at the time you took them from him?

A. Yes, sir.

Q. Didn't you afterwards ascertain their market value?

A. I say before I took them he brought this statement up, which I took in good faith.

Q. After you had taken them, did you ascertain their market value?

27 A. No, sir; I never attempted to sell them, I only wanted them for an investment. I had more than I thought I ought to have of one thing and I desired simply to change and I expressed that to Mr Condict as a friend and he helped me to make the exchange.

Q. Did you ever receive any interest on the Indiana and Illinois Central Railway bonds?

A. No, sir.

Q. You mean by that never at any time?

A. I never have received any; I think the bonds were returned to him with the coupons all attached when the exchange was made.

Q. All the coupons attached when the exchange was made?

A. Yes, sir.

Q. Did you make any effort to obtain payment of this loan from Mr. Condict prior to the 24th of June.

A. No, sir; not at all. I was perfectly satisfied to change it just as I did; I never asked for any payment.

Q. Did you attempt to obtain any payment of the $25,000 loan at any time before you got the Indiana bonds?

A. I thought you meant sometime before I took the other bonds. All the attempt made was the change, sir: the change that was made.

Q. My question is this: Did you make any effort to have Mr. Condict pay the $25,000?

28 A. I never asked him to pay the note, if you mean that. If I made any effort it was the exchange first, as I have stated.

Q. I will ask you, Mrs. Sprague, is it not the fact that Mr. Condict has converted the securities placed in his hands by you on the 15th of February, 1870, and could not return them to you?

A. I never asked him to return them to me; I do not know whether he could or not.

Q. Is it not the fact that he had done so and could not return them to you?

A. I cannot tell, sir, what the fact was. I never asked him to do it. I was perfectly satisfied with what he gave me at the time.

Q. Do you know from any other means as to whether he had or not?

A. No, sir; I do not know whether he had or not. I will state that on the 15th day of February, 1870, I loaned J. E. Condict $25,000 upon his note dated that day and to mature on the first of May, 1871, with interest at seven per cent., secured by policies of insurance upon his life and that of his brother, to the amount of $20,000, and to make up the consideration of that note, I gave him ten first mortgage bonds of Terre Haute and R. R. R. Co., $10,000, @ 94 per cent..... 9,400 00

5 sinking fund bonds Chicago and N. W. Railway, 5,000, @ 90..... 4,500 00

6 1st. mtg. bonds Grand River Valley Railroad Company, $6,000, @ 1.02..... 6,120 00

100 shares Morris and Essex Stock., 5,000, @ 86¼..... 4,343 75

Excess of note over proceeds at the above prices..... 636 25

Making a total of..... $25,000 00

29 and received from him the note. These bonds were given him instead of money, and were to become his as the consideration for the note, the prices mentioned being the market price of the securities I gave him at the time. On the 7th of November, 1870, he applied to me for a further loan of money, and I agreed to make him a loan to the extent of $60,000, of which the note of $25,000 was to be part.

Thereupon I surrendered to him the $25,000 note, one first mortgage bond Savannah and Charleston R. R. Co., par $15,000, @80

per cent., 12,000; interest on ~~debts~~ ditto from July 1st, 876.25; 1st mtge. bonds Union Pacific R. R. Co., par $3,000, @ 83 per cent., $2,490; interest on same $70.95, and subsequently on the first of May, 1871, paid him $19,139.19 in cash, making a total, including his note of $25,000, of $60,000, for which it was then agreed I should take seventy-five bonds of the Madison and Portage Company of one thousand dollars each, at 80 per cent., which I did, and the transaction which began as a loan was thereupon closed as a purchase. I cannot now say from recollection whether I had the Madison and Portage bonds before I finally took them as my property as security or not. Subsequently, on the 24th of June, 1871, Mr. Condict having suggested to me to exchange my seventy-five Portage bonds for bonds of the Indiana and Illinois Central Ry. Company, and I having in the mean time made inquiry as to the character of the Illinois bonds from various parties as I have mentioned, I finally determined to exchange the two classes of bonds dollar for
30 dollar and gave up to Mr. Condict my seventy-five Portage bonds and took instead the seventy-five Illinois bonds.

Q. Previous to the time that you received the Portage bonds, what, if anything, did you have as security for the money that you had loaned Condict, and the collateral?

A. I had his own note, and I had the policies of insurance on the lives of himself and brother, and I had an amount of stock and notes of Mr. Campbell, and a good deal of the stock of that road that he gave me. Then he came up to me one evening and told me about this good road, and advised me to sell Delaware and Lackawan'a stock, and take one ~~one~~ hundred of the Madison and Portage bonds. I thought it over, and I did not think favorably of it. I thought it over a few days, and finally thought I would take seventy-five Madison and Portage, and told him I would take seventy-five, but a hundred was more than I wanted to put in one thing. I took them, and I believe I gave him Delaware and Lackawan'a stock and the rest in money. I think I did not want to sell the stock, but I did not have enough to pay the balance between the amount I had loaned him and the money the Portage bonds cost. After that time I thought I had rather have the stock in my own hands, and I raised the money and took the bonds. I think that is the transaction exactly, as near as I can remember. After a while he came to me, and told me he knew of a still better investment, and which time was three or four months before I
31 made the exchange, from the time he first came.

Q. The exchange of Portage for Illinois?

A. Yes, sir. It was as much as three or four months before I made the exchange. He came to me, and in a friendly way told me he thought I could get a still better investment. He represented himself as president of the road, I think, and stated that he knew all about it, and brought me a pamphlet. He said the road ran through good lands, and had a land grant, etc. I inquired of these

gentlemen I have mentioned, and I think three or four months after he first came to me I agreed to the exchange, and told him I would do it.

Q. You loaned Mr. Condict a certain amount of the stock of the Delaware and Lackawan'a Railroad Company, did you not?

A. Yes, sir.

Q. When was that?

A. Isn't it stated on that paper?

Q. No; there is no statement here about the Delaware and Lackawan'a stock.

A. I cannot tell exactly; it was not very long before; it was somewhere in November.

Q. November, 1870?

A. Yes, sir; somewhere in that neighborhood.

Q. How much stock did he have?

A. I think there were 500 shares.

Q. Fifty dollars a share?

A. I think that is it.

Q. What did he do with that stock?

32 A. I do not know what he did with it.

Q. Did you ever get that stock back?

A. Yes, sir.

Q. Who did you get it from?

A. I got it from him; I went down to him and paid him the money.

Q. Do you know where the stock had been or what he had done with it in the meantime?

A. No; I do not. I went down to him and asked him for the stock that I had given him, and told him I preferred to take the bonds then and close the thing up. I paid him the money and took the stock and bonds.

Q. Isn't it true that he pledged that stock to the Union Trust Company to secure a loan which he had made there, and subsequently you wished to get your stock back, and you went and made a loan upon it at the Farmers' Loan and Trust Company?

A. Yes, sir.

Q. And you used that money which you got there to take up the stock where Condict had placed it?

A. Yes, sir; but where the stock was I cannot say.

Q. But it was pledged, and you had to raise the money to take it up?

A. Yes, sir.

Q. How much money did you have to advance then to take up your Delaware and Lackawanna stock?

A. I don't know that I had to advance any.

Q. There is a statement here of $19,000 and upwards.

33 Now, how much did you borrow from the Farmers' Loan and Trust Company?

A. I suppose enough to enable me to pay for the bonds.

Q. I am talking about the Delaware and Lackawanna stock now, not the bonds.

A. Well, sir, I took it to the Farmers' Loan and Trust Company, and raised money enough on that to enable me to take the Madison and Portage bonds and close the thing up.

Q. Did you not take that money and use it to get back your Delaware and Lackawanna stock?

A. No, sir; I did not go for the stock at all.

Q. Was not your stock returned to you upon your paying that $19,000?

A. Yes, sir; certainly.

Q. The Delaware and Lackawanna stock was returned to you, then?

A. Yes, sir; I hypothecated the stock to Mr. Condict to make up the difference in the Madison and Portage bonds.

Q. You had loaned to Mr. Condict five hundred shares of the Delaware and Lackawanna stock, you say, at that time?

A. Yes, sir.

Q. After that you wished to get the stock back, and in order to do it, you went and made a loan with the Farmers' Loan and Trust Company, of $19,000?

A. Yes, sir.

Q. And that money you used to get back your Delaware and Lackawanna stock?

A. Yes, sir; I went to the Farmers' Loan and Trust Company, and raised the money, and took up the bonds.

84 Q. You had had those bonds in your possession since November 7th, 1870?

A. When I made the full payment, my son says, is the time I got the bonds.

Q. You corrected your statement, saying you had those bonds from November 7th, 1870, and I understand Mr. Whiting makes the same statement?

A. I had the bonds from the time I made the final payments.

Mr. WHITING.—They were in her possession legally, though not actually in her hands. They were deposited in a safe deposit.

Q. (By Mr. Macoughtry.) They were in your possession, then, as matter of fact, from Nov. 7, 1870?

A. Yes, sir; I see now that they were; but it is a long time ago, and I did not recollect it.

Q. Those bonds were delivered to you as a security for your Delaware and Lackawanna stock, were they not?

A. No, sir; not at all.

Q. What security had you for your Delaware and Lackawanna stock; any pledge?

A. It was part payment; I told Mr. Condict I did not want to

sell the stock, and I had to pay the difference in cash; afterward I thought it was better to close the matter up; it was only a very short time from the time the last loan was made until I closed the thing up; only a few days.

Q. You did not buy these bonds, then, until the first day of May, as I understand it, 1871?

A. Somewhere about that time; I think it is just that date. You mean the first Indiana and Illinois bonds?

Q. No; I mean the Portage bonds.

A. I do not know; I think it is all stated there, sir.

35 Q. Who made out this written statement?

A. Mr. Robert Stratton.

Q. Have you compared it with your books?

A. He is my book-keeper.

Q. But have you personally compared it with your books?

A. No, sir; I have not.

Q. You do not know, then, whether this is an accurate statement, of your own knowledge?

A. I did not turn to them; but, so far as I read it, it was fixed in my mind that it was correct, but I did not turn to my books to see; it appeared to be quite right as I read it over.

Q. Are your books in the city?

A. Yes, sir.

Q. Containing these transactions here?

A. Yes, sir.

Q. Will you produce these books here before the master in chancery?

A. Yes, sir.

Counsel for defendants have no further questions to ask the witness until they can examine her books.

Cross-examined by Mr. Potter:

Q. Mrs. Sprague, if I now understand you, in November, 1870, Mr. Condict applied to you to buy seventy-five Portage bonds, which you agreed to take at 80 per cent., toward payment for which you turned out the $25,000-note, the Savannah bond, the Union Pacific bond; and not having money enough to pay the balance in cash, gave Condict the Lackawanna certificate

36 which you have spoken of, on which to borrow the balance, which certificate you subsequently took up yourself, paying that balance thereby, and thus closing the purchase. Is that the correct account of the transaction; and if not, in what respect is it not?

A. I said that same something, in substance, but I will have it exactly right. The Charleston and Savannah and the Union Pacific bonds I had loaned him as a second loan, upon which I had taken Mr. Campbell's notes and stock of the Madison and Portage road as collateral security, and then after that a little while I thought I

would prefer to close the whole thing, and I sold the Delaware and Lackawanna stock, putting in the first loan and the second loan and paying the amount in cash and taking up my stock and so finishing it up. Then, towards spring, he came with another proposition. The Savannah and Charleston bonds were the things that went, of course, but they had gone on the loan before; so, to make it exactly right, that is the process it went through.

Q. When did this transaction take place?

A. This was in November; the gentleman asked me before if I took any security; it was only a very few days from the time I agreed to do this and take the 75 bonds before I thought I had better close the thing up; then I thought I would let it stand and take the bonds, but finally I thought I had better close it up, which I did.

Q. Then you mean you did close it in the fall of 1870?

37 A. Yes, sir; then I closed it; then, the following spring, I think it was, he made this proposition.

Q. Why, then, this entry in May, 1871, you paid Condict a cash balance of $19,000?

A. The Delaware and Lackawanna stock must have laid in his hands until about that time; I agreed to take the bonds in the fall.

Q. And the transaction so made in the fall was incomplete, in respect to the Delaware and Lackawanna stock, and so remained until May, 1871?

A. Yes, sir; I suppose so; the books will show exactly; that was what I was to have—the 75 bonds; I was short of cash to pay for them, and then I thought I would take the stock up myself and not let it lay; I did not want to sell anything; I wanted to take it up out of moneys I expected to get—not sell the Delaware stock, but pay for the balance of the bonds and take them without making any change.

Q. Except only on the redemption of the Delaware and Lackawanna stock, the transaction was complete in the fall?

A. Yes, sir; it was a fixed thing in the fall; the Delaware and Lackawanna was to be part payment; it was no loan at all.

Q. Then that transaction was complete in the fall?

A. Yes, sir.

Q. And the taking up of the Delaware and Lackawanna stock was the final transaction?

A. Yes, sir.

Q. When, subsequently, Mr. Condict advised you to ex-

38 change the Madison and Portage bonds for the Indiana bonds, had you any knowledge, belief, or suspicion that he did not own or was not entitled to give you the Indiana bonds which he offered for the exchange?

A. No, sir; not the slightest; I had no doubt he had a perfect right to sell them.

Re-direct examination by Mr. Risley:

Q. You say, madam, that the interest had not been paid on the

Madison and Portage bonds, and that is the reason why Mr. Condict subsequently assigned to you his contracts with Mr. Lazare as security for his paying that interest?

A. Yes, sir.

Q. Did not the non-payment of the interest by the company suggest to you that there was something wrong about those Madison and Portage bonds, or put you upon the inquiry concerning them?

A. I thought the investment was not as good as he had thought it to be, but that had nothing to do with these bonds, sir.

Q. You thought that the investment was not a good one, or not so good as he had represented it to be?

A. I did not feel anxious to part with them at all, because Mr. Condict first wished to make the change, because they had not paid interest; there were some changes contemplated by which they would pay interest.

Q. You had been disappointed in not getting your interest?

A. Somewhat disappointed; it had not been a very long time.

39 Q. And the matter had come to such a pass that you looked to Mr. Condict to pay your interest instead of the company?

A. If I gave up the bonds of course I looked to him.

Q. Was there ever any question raised as to Mr. Condict's title to those Madison and Portage bonds?

A. Not to me; I never heard of it, sir.

Q. Had you heard of any such question being made to him?

A. No, sir.

Q. You had not heard of any demand upon him to return those bonds, had you?

A. No, sir.

Q. Has Mr. Condict ever, in his conversations with you, told you he was in difficulty about those Madison and Portage bonds?

A. No, sir; he never did.

Q. He did not tell you the company was pursuing him, and required him to return them?

A. No, sir; he never did; never alluded to ~~them~~ that in any way to me.

Q. Did he seem anxious to get them into his possession again?

A. He told me he thought it would be a better investment, because the road ran through a country that he thought there would be more advantage after a while, and it would be better for me to make the change, but he never said the others were not good, and never said he did not have a right to them; he advised me

40 in that matter as he had in previous ones.

Q. Was not there a suit pending against Mr. Condict at that time for those bonds, and was not there an order out for his arrest because he had improperly taken them?

A. I do not know that there was; he would not be likely to inform me of anything of that kind.

Q. How did Mr. Condict, then, come to agree with you to pay this interest, which the company had not paid, on these Madison and Portage bonds, if you had bought them a long time before that?

A. It was not long; he wanted me to make the exchange, and said he would see that the interest was paid. I was not disposed to make the exchange, and felt inclined to hold the Madison and Portage bonds. He told me then that he would personally see that I had the interest.

Q. He would see personally that you had the interest on these bonds although they were yours?

A. Yes, sir; he said he would see that I did not lose by it; he gave me a written guarantee, which I have mislaid somewhere, that he would be responsible and see that it was paid; that was if I would give them up. I said "I don't wish to make the exchange, Mr. Condict." He said, "I think you will find it better, be-
41 cause it is a better road." Then I consulted with these gentlemen and they said they would make the exchange. Not one of them doubting that Mr. Condict contemplated anything wrong at that time. I had not for a moment thought anything of the kind, for at that time I thought him a man of strict integrity in every way, and relied entirely upon his statements.

Re-cross-examination by Mr. Potter:

Q. What were the relations between Mr. Condict and your husband?

A. They had been quite intimate friends for a long time; Mr. Sprague always thought well of him, and I thought he was a very good man for me to ask advice of.

Q. When the Portage bonds were exchanged for the Indiana bonds, was there any arrearages of interest upon the Indiana bonds? When you got them, did you get the bonds without any arrearages of interest?

A. Yes, sir; without any arrearages.

Q. Had they all the coupons on from the date of their issue?

A. Yes, sir; I think they had every coupon attached when they were given to me.

Q. You think they had unpaid coupons when you got them?

A. I do not know; I know I never have received any. Mr. Condict had the entire dealing in the matter; I had much confidence in him. I went to Mr. Condict instead of going to Mr. Whiting as I should have done. All the transactions were made in good
42 faith; I assure you of that. I have tried to speak to you of every transaction, and I want to give them to you exactly; and that was the way it was. I know that some of my transactions seem rather lame, but I had perfect faith in Mr. Condict, as I have stated.

Q. At the time of the exchange of Portage for Indiana bonds,

and as part of the arrangement of exchange, Mr. Condict agreed to pay the back interest on the Portage bonds, did he?

A. Yes, sir; he did.

HENRY B. HAMMOND, called as a witness on the part of defendants, being duly sworn, testified as follows:

Ex'd by Mr. Risley.

Q. Mr. Hammond, state your name, age, residence, and occupation.

A. Henry B. Hammond; reside No. 9 East 40th St., New York; it is pretty hard to tell what my profession is—lawyer, I suppose; also a railroad president; my age is 36 years.

Q. State whether you ever had any connection with the Indiana and Illinois Central Railroad Company; and if so, what the connection was and when it began?

A. I was elected president of the Indiana and Illinois Central Railroad Company in May, 1871, I think it was.

Q. May 3rd, 1871, it appears to be?

A. Yes, sir.

Q. You were elected a director at that time, were you?

43 A. Yes, sir; and I believe president, too, but I did not accept or enter upon the active duties of president until July, 1871.

Q. State whether, if you know, the mortgage made by that company and dated April 1st, 1870, was subsequently annulled and the bonds which had been issued under it retired and destroyed; and, if so, how you come to know that? State your connection with it.

A. I was made a committee on the behalf of the Indiana and Illinois Central R. R. Co., and, I think, Mr. Frothingham, and I do not call to mind the other director, but myself and one or two of the directors of the Union Trust Company were made a committee to destroy those bonds and report.

44 Q. State whether you did destroy them, and whether you destroyed all.

A. We did; all of them except two; two we did not destroy.

Q. State whether you destroyed all the coupons that had been originally attached to those bonds.

A. They were.

Q. All of them?

A. Yes, sir.

Q. Had any of those bonds been issued by the company, or had they got out of the possession of the company prior to this surrender and destruction, if you know?

A. I think seventy-five of them had; I think twenty-five of them were in the hands of Mr. Ely, and these two that I speak of were in the hands of a man by the name of McCormack. The rest I supposed were in the hands of the executive committee.

Q. Those bonds, with all the coupons attached, were destroyed, you say?

A. Yes, sir; with the exception of the two I mentioned.

Q. Mr. Hammond, state if you know anything about the 75 bonds which are claimed by Mrs. Sprague here; if you know anything about their being exchanged for new bonds of the company, state the circumstances.

A. I gave instructions to you to go and arrange for the
45 exchange of them with Mr. Whiting.

Q. The counsel for Mrs. Sprague?

A. Yes, sir; and I have a certificate which was signed by both you and Mr. Whiting, that they were exchanged subject to all legal rights existing.

Q. Those bonds were among those you destroyed?

A. Yes, sir.

Q. And the coupons attached to them?

A. Yes, sir.

Q. All the coupons from the first issue?

A. Yes, sir.

Q. I mean all that were originally attached to them?

A. Yes, sir.

Q. Mr. Hammond, state if you know one John Elliott Condict.

A. Yes, sir.

Q. State when your acquaintance with him began.

A. Some time prior to May, 1871; I think sometime in the year 1870.

Q. In the year 1870?

A. Yes, sir; he was a client of my former partner, Mr. Pomeroy.

Q. State if he had any connection with the Indiana and Illinois Central Railway Company; and if so, what it was and when it began.

A. Well, I cannot state of my own knowledge prior to May, 1871. From May, 1871, until I went into the enterprise, he was a director, and I believe a member of the executive committee.

46 Q. Of this Indiana company?

A. Yes, sir.

Q. When was he elected a director?

A. In May, 1871.

Q. The third day of May, 1871, was the annual meeting of the stockholders?

A. Yes, sir.

Q. If you ever had any negotiations with Mr. Condict in regard to the return to the company of those seventy-five bonds that we have been talking about, please state what they were and how they occurred, with all the circumstances.

(Objected to by Mr. Potter; taken subject to objection.)

A. That would be impossible; I went to Mr. Condict, I was going to say, about every day, not for the seventy-five bonds alone,

but for one hundred bonds. There were one hundred bonds supposed to be in the possession of Mr. Condict when I took my position in this road, which he was to deliver up to this company, and I continually went to Mr. Condict and demanded them, and he told me he would give them up in a few days; then he said he would give them up if I would pay the indebtedness of the company which he had advanced. Said I, "any indebtedness that
47 this company owes you will be paid," and we have paid all for which we could get any vouchers; but we have got only twenty-five of the bonds, which we got of the Bowery Bank by paying $12,300, an amount which had been loaned on them, and we also obtained the two bonds by agreeing with Mr. Frothingham that three other bonds should be placed instead of those, and they were; sometime during our foreclosure proceedings the matter was settled with the Union Trust Co., and the bonds cancelled. If I were to recount every interview and transaction I had with Mr. Condict, it would be impossible for me to do it.

Q. State the substance of the conversation, if you had any, in respect to his claim to the bonds.

A. I will state further, I have a letter somewhere in my possession, or have had until we moved into this building, though since we moved I have not been able to find it, in which he (Mr. Condict) says he holds those bonds, and will deliver them to us upon payment of the amount we owed him; and at that time we owed him nothing.

Q. In that one hundred this seventy-five is included?

A. That includes the seventy-five.

48 Q. When was this, Mr. Hammond, that these interviews occurred and this letter was written?

A. This letter was written a short time before, or just about the time I got the bonds from the Bowery Bank.

Q. Can you give the time approximately?

A. No, sir; I can not; it was some time in 1871 or 1872; before the exchange of these bonds.

Q. It was long after the third day of July, 1871, when you assumed the office of president?

A. Yes, sir; certainly I had nothing to do with the active business of the company before that.

Q. You assumed the office of president of the company on the 3d of July, 1871?

A. The 3d of July; yes, sir.

Q. And this was after that time?

A. Yes, sir.

Q. Do you know how Mr. Condict came into possession of these 100 bonds?

A. Mere hearsay; what was told me by others. The report to me by the treasurer is all the information I have.

Q. I will ask you to give that.

(Objected to by Mr. Potter. Taken subject to obj.)

A. Mr. Haight reported to me that he had delivered them
49 to Mr. Cordict in behalf of the executive committee, as one of that committee, and I have also heard Judge Roache say the same thing, he being on that committee.

Q. Mr. Hammond, state, if you know, whether the railroad company ever sold these bonds to any one, or received any value for them?

(Objected to by Mr. Potter. Taken subject to obj.)

A. Which ones do you refer to?

Q. Those 100 bonds; I refer more particularly to these seventy-five.

A. I do not know of anything ever having been received. There is nothing on the books of the company showing it.

Q. There is nothing on the books of the company showing that the company ever received anything for them?

A. No, sir; nor that they ever issued them.

Q. You are familiar with the records of the company, Mr. Hammond?

A. Yes, sir.

Q. And there is nothing on the records of the company, you say, showing that the company ever issued those bonds, or received any value from anyone for them?

A. Not to my knowledge.

Q. If there was anything on the records to that effect you would know it, wouldn't you?

A. Certainly.

50 Cross-examined by Mr. Potter:

Q. Mr. Hammond, your connection with this company began in May, 1871?

A. I was elected president in May, 1871; I did not accept the office until July 3d, 1871. I was in California when I was elected.

Q. When did Mr. Condict's connection with the company begin?

A. In May, 1871, I think, sir.

Q. At which time he was chosen a director?

A. I think he was; yes, sir.

Q. And became one of the executive committee?

A. Yes, sir.

Q. Who were the other members of the executive committee beside Mr. Condict?

A. The executive committee was composed, I think, of the president and Mr. Condict, Mr. Seaman and Mr. Lazare.

Q. Then, until you began to act, it was composed of the other three gentlemen?

A. Yes, sir.

Q. Had the company an office here?

A. Yes, sir.

Q. Where?

A. The records of the company were with Mr. Risley, at 128 Broadway, and part at the office of Mr. Condict; their main office was in Indianapolis.

Q. Where was the treasurer of the company?

A. Here.

Q. Where did he have his office?

51 A. Mr. Haight, he was a banker in Wall st.

Q. But had he any office for the company apart from his own office?

A. I think not; no, sir.

Q. Had the company any office except that office, its office out there?

A. Not here at that time.

Q. I mean in New York.

A. I had supposed until Mr. Risley corrected me, that they had an office at 78 Broadway.

Q. Do you know whether they had any sign out at 78 Broadway?

A. I do not know.

Q. After you assumed the active duties of president you learned from the treasurer that there were 100 bonds delivered to the executive committee?

A. Yes, sir.

Q. Did he claim to have improperly delivered them to the executive committee?

A. No; he delivered them to the executive committee and took a receipt for them from Mr. Condict, I think, as a member of the executive committee.

Q. He did not then deliver them improperly himself?

A. He did not say he did.

Q. He did not claim he had, did he?

A. Oh, no; he did not claim he had.

Q. Upon hearing that, and because of it, you applied to Mr. Condict for the bonds?

52 A. In July, when I took possession of the road, I made it a sine qua non of myself and associates going into the road that Mr. Lazare should give up the contract he had for construction, and that new bonds should be issued and the old bonds taken up and exchanged therefor, and when I went into the company one of the first things I did was to get things in shape so that we could issue the new bonds, and, of course, I called for this 100 bonds with the others, and insisted upon Mr. Risley's finding them, he being the secretary of the company, and also Mr. Haight, and that letter I spoke of was afterwards written to myself or Mr. Haight, I don't know which, by Mr. Condict, saying that he held the 100 bonds and would deliver them up upon being paid the advance he had made to the company. I always replied that any advances he had made to the company we would pay.

Q. What advances did he claim?

A. He claimed advances to the amount of about $25,000. All the advances which belonged to the company, or which belonged in any way to the company's works, was about $12,200.

(Mr. Potter objects to the last of the answer.)

Q. Have you copies of your letters to him?

A. I have, sir.

Q. Will you furnish them, please?

A. I cannot do it now; I will do so, however.

Q. And you are not able to find his letters to you?

53 A. That is the only one except this. (Presenting letter.)

Q. You find none but this?

A. None but that.

Q. How long did Mr. Condict remain connected with the company?

A. He went out, I think, when I went in, or a short time afterward.

Q. He resigned some time during 1871, then, do you think?

A. Yes, sir.

Q. Had he been a contractor for the company before he became a director?

A. No, sir.

Q. Had he any relations with Mr. Lazare, whom you have spoken of as a contractor?

A. Yes, sir.

Q. Had he been employed by the company before he was a director?

A. No, sir; not to my knowledge.

Q. Was Mr. Seaman one of the board of directors elected at this election of 1871?

A. Yes, sir.

Q. What position did he hold in the company besides that of director?

A. I think he was one of the executive committee also.

Q. Have you a copy, or can you furnish a form of this bond which you speak of?

A. Only from the record book.

Q. Have you a copy of the mortgage?

54 A. It is a part of the records of the company.

Q. You have the form itself?

A. Yes, sir.

Q. So that we can ascertain what that form was?

A. Certainly.

Q. From whom did you learn that one of the banks held a portion of these 100 bonds, for which you applied to Mr. Condict?

A. Mr. Van Der Lip.

Q. Not from Mr. Condict?

A. No, sir.

Q. Upon applying to the bank you learned that?

A. Mr. Van Der Lip was a client in our office, and he told me he had received those 25 bonds from Mr. Condict on previous transactions between them, of an individual character, and Mr. Van Der Lip raised this amount of money of the Bowery Bank. Mr. Condict gave an account to Mr. Lazare, I understood, and he was to give it to me, but I have never seen the account.

Q. Upon learning this of Mr. Van Der Lip, you applied to the bank, paid the loan, and took the bonds?

A. The new organization gave their note, and at the maturity of the note we paid it, they agreeing to take the new bonds, as Mr. Whiting did; to exchange.

Q. And in doing that you had Mr. Vanderlip's consent?

A. Certainly; he made no objection; my negotiations were not with Mr. Van Der Lip, but with the bank.

55 Q. Did you ascertain at that time, Mr. Hammond, who had the other 75 bonds?

A. Well, about that time, I can't say positively. Mr. Whiting knows as well as I do. I sent Mr. Pomeroy, or went myself, immediately to see Mr. Whiting about it.

Q. From whom did you learn about the other 75 bonds?

A. I think from Mr. Pomeroy; I think Mr. Condict told Mr. Pomeroy of it, but I am not positive.

Q. And thereupon you tried to get them?

A. Commenced proceeding to get them if I could.

Q. And that resulted in this arrangement for exchange?

A. Oh, no; knowing where they were in Mr. Whiting's hands, or in the hands of his client, Mrs. Sprague, I was more anxious than anything else to make the exchange of the bonds, and Mr. Whiting was so kind as to aid me in making the exchange, which was without prejudice to either party.

Mr. Potter.—I will put this letter in evidence, which is produced by Mr. Hammond.

Letter marked by the master, Ex. B.

SAINT LOUIS, *Jan'y 8d*, 1873.

MY DEAR MR. HAMMOND: I was sorry to have to leave New York so hurriedly that I was unable to see Mr. Pomeroy and obtain for you my vouchers for money paid by me for account of

56 the Indiana and Illinois Central R'y Co. My departure was hastened by important telegrams from Washington, so that I did not even have time to see you. Will you please ask Pomeroy to hunt up the vouchers; I gave them to him just after the meeting of directors, when my resignation was accepted. I can procure duplicates if they have been mislaid.

I don't want (nor do I expect) you to allow for anything not absolutely disbursed by me, and you will find the account that you have in the main correct; part of the bill for stationery, bonds, &c.,

you paid direct, which should, of course, be deducted. I will be home shortly, and then, with your consent, will devote a day or two (more if necessary) and settle the whole matter.

I passed near some of our coal lands yesterday, and heard a good deal of talk about the I. and Ill. Cent. I am sorry I am not one of your officers. I know the road will be a great success.

Very truly yours, J. ELLIOTT CONDICT.

Q. Have you the records of the company here?

A. Yes, sir.

Q. When did you go to California, Mr. Hammond?

A. I think in the latter part of April. I came back in the latter part of May.

The record book of the company was produced and examined by counsel.

Q. Please look at the minutes of the 3d of May, 1871,
57 and say if Mr. Condict was not then elected vice-president of the company?

A. Yes, sir.

Q. Until you accepted the active duties of the company, in July, 1871, Mr. Condict as vice-president presided?

A. That I do not know.

Q. Please look at the minutes; it is so stated.

A. It so appears in the minutes.

Q. This mortgage, dated April 1, 1870, is the one under which the bonds referred to were issued?

A. Yes, sir.

Q. Have you a copy of the receipt which the treasurer took from the executive committee for those bonds?

A. I have not got it, but the treasurer insists upon it that he delivered it to me. I do not remember ever to have seen it.

Q. Do you recollect the date of that receipt?

A. I do not see how I can when I have never seen it. Mr. Haight was the man who took it.

Q. You do not know, then, what the date was?

A. Not from my own knowledge, as I said before.

Mr. Potter.—I ask that the following resolutions be made a part of the record, as they appear on the minute book, at page 321:

"*Resolved*, That the Union Trust Company of New York, trustee aforesaid, be, and they are hereby authorized to countersign
58 and deliver to the executive committee of this board so many and such of the bonds mentioned in the trust deed to them, this day authorized, as said executive committee may, from time to time, in writing request; and a receipt therefor by such executive committee, or a majority thereof, shall be a valid and sufficient discharge of the said trust company on account of, as in regard to such bonds."

Also the following resolution:

"*Resolved*, That the executive committee of this board shall possess and exercise, by a majority of its members, all the administrative and executive powers and duties of the board of directors, but only when the board shall not be in session."

JOHN E. RISLEY, called as a witness on the part of the defendants, being duly sworn, testified as follows:

Ex'd by Mr. Macoughtry:

Q. Mr. Risley, if you were ever connected with the Indiana and Illinois Central R. R. Co., will you state what that connection was, and the date of it?

A. On the 4th day of May, 1870, at the stockholders' meeting, I was elected a director of the company, and served in that capacity until the next annual meeting of the stockholders, which occurred on the 3rd day of May, 1871.

Q. You can state whether you were re-elected then?

A. I was re-elected then a director, and at a meeting of the board of directors on that day I was elected secretary of
59 the company. I at once assumed the office, and discharged the duties up to the date of my resignation about the close of the year. I resigned the office of director, I think, in the winter following, in favor of Mr. George M. Pullman, but I continued to be secretary for some months after that.

Q. Mr. Risley, will you take the record of the company and state as to whether, at the meeting of the directors of the 3d May, 1871, new by-laws were passed?

A. Yes, sir; I remember the fact independently of the record, and the record also shows it.

Q. You can state as to whether there is any clause in those by-laws repealing any previous by-laws, and state what it is.

A. Yes, sir; section 2 of article 9 is in these words: "All by-laws of the company inconsistent with the foregoing are hereby repealed."

Mr. Macoughtry.—I desire to put in evidence section 1, art. 6, of the by-laws, and ask the witness to read it.

The Witness (reading):

ART. 6.—*Standing committees.*

"Sec. 1.— The standing committee shall consist of an executive committee, which shall be appointed by the board, and shall consist of three members beside the president.

"Sec. 2.—The executive committee shall have, and may exercise, by a majority of its members, all the powers and authority
60 which, from time to time, may be delegated to it by the board of directors. A record of all the proceedings shall be kept in a book provided for that purpose by the secretary, and certified by him, which shall be read at the next ensuing meeting

of the board of directors. The secretary of the company shall call meetings of this committee on the request of any one of its members."

Q. What is the date of that?

A. These by-laws were adopted by the board of directors at their meeting held in Indianapolis, on the 3d day of May, 1871.

Q. You can state who was sec'y of the executive committee.

A. I was myself secretary of the company, and ex-officio sec'y of the executive committee.

Q. Those by-laws provided for a secretary of the committee; you were secretary of the company?

A. I was secretary of the company and also of the executive committee. I kept all these records; it is my handwriting.

Q. Now, sir, you can state as to whether any meeting of the executive committee was ever had, from the 3d of May, I believe it is, 1871, until the first of July of the same year.

A. No, sir; no meeting of the committee was ever held during that interval.

Q. You can state as to what your knowledge of the fact is—as to whether a meeting of the committee was held or not.

61 A. Well, I kept the records of the meetings of the committee, and I never called a meeting. I never attended any and kept no record of any meeting. There was no meeting, within my knowledge, between May and July. There was no meeting of the executive committee held until after Mr. Hammond returned and accepted the office of president.

Q. You can state, if you know, where these bonds that are in controversy were kept, and the circumstances under which any deposit of them with any safe-deposit company was made, and the causes that led thereto.

(Objected to by Mr. Potter.)

A. Do you want me to state all the circumstances?

Q. I want a general statement of it; in whose custody they were, how taken out of the safe company, and how they got into the custody of Mr. Condict?

A. Of the bonds under that mortgage, the trust company never certified or delivered over to the company but five hundred of them.

Q. Over to the railroad company?

A. Over to the railroad company; the others all remained in the possession of the trust company. All that five hundred were put into the hands of the old executive committee which preceded this one we are talking about—of the board of 1870—and that executive committee pledged $100,000 of them with Clarke, Dodge and Company, and $100,000 of them to J. and W.

62 Seligman & Co., as security also for an advance, the remaining $300,000 were in the hands of Messrs. Champlin & Lazare. Mr. Warren was then president of the company, resid-

ing at Decatur, Ills. Judge Roache, of Indiana, was acting as the counsel or legal adviser of the company, and was also a director. They came on to N. Y. and found those $300,000 bonds were in the hands of Champlin and Lazare, and became so much dissatisfied about it, and demanded that they should be returned to the trust company.

That was not done, but finally they went and hired a vault or safe in this safe-deposit company, under this building, 120 Broadway, and put the bonds in it and took two keys. Mr. Warren took one key and took it home with him, out in Illinois, and Champlin and Lazare kept the other; and the agreement and arrangement down at the office was that the safe should not be opened until these gentlemen were both present and their keys both present. The bonds remained there until in the spring of 1871.

It must have been in June; I won't be positive as to the date, although I remember the fact very well. It must have been in June, 1871, that Judge Roache came here to New York and brought Mr. Warren's key with him, and with Mr. Warren's permission he went with Mr. Lazare and got those $300,000 bonds and turned them over to Mr. Haight, the treasurer of the
63 company. Mr. Haight, almost immediately after that, on the same day or within a few minutes after the bonds were surrendered to him, returned them to Mr. Condict and Mr. Lazare. Condict and Lazare delivered 200 of the bonds to parties to whom they belonged; the remaining one hundred—I think I am right as to the amounts—were left in the hands of Mr. Condict.

Q. In what capacity were they left in his hands? If you know, state.

A. My understanding was then that he held them as an officer of the company, as a member of the executive committee, and as the chief executive then acting.

Q. For what purpose were they left?

A. Well, I don't know of any purpose except for safe-keeping; at that time there was no directions or instructions to sell any of the bonds or use them in any way by anybody in behalf of the company; they were left with him for safe-keeping, I should say; I should so deem it if they had been left with me. I ought to state that my recollection is that Mr. Lazare had paid off a part of the loan of Clark, Dodge and Company and a part of the loan from Seligman & Co., and had got from them some of the bonds originally pledged to them. Each one, I think, surrendered either $12,000 or $25,000. Mr. Lazare still retained in his hands, I think, those bonds—twelve bonds from each one, I think.

Q. What is the fact as to whether any of these 75 bonds
64 were ever sold by the company or any officer of the company?

A. They were never sold, so far as I know or believe. I never knew that the company had parted with the bonds at all. I never

knew that there was any trouble about their being in the possession of the company until I attempted to get them from Mr. Condict, under directions from Mr. Hammond, for the purpose of surrendering them and having them destroyed.

Q. Have you examined the records of this company with reference to any authority by this committee to Mr. Condict to sell these bonds?

A. I have; yes, sir. I have examined the records and the records of the executive committee as well.

Q. You can state what the fact is as to anything of the kind.

A. There is no entry of any authority there.

Q. Have you any personal knowledge of any such authority?

A. There never was any within my knowledge.

Q. Examine this book, and state whether it contains the minutes of the executive committee.

A. Yes, sir; these are the records of the executive committee; the first meeting at which action was taken was the 15th of September, 1871.

Cross-examined by Mr. Potter:

(A copy of the bond secured by the deed of trust of April 1, 1870, complete, will be furnished.)

Q. When you speak of the executive committee as first meeting in May, 1871, you speak of its first meeting after the election of the 3d of May, 1871, of course?

65

A. I did not speak of the executive committee.

Q. I mean September, 1871; you speak of their first meeting in Sept., 1871, you mean the first meeting after the election of May, 1871?

A. Yes, sir; the first meeting at which they transacted any business.

Q. Of which you find any record?

A. Yes, sir.

Q. There are meetings of all the executive committees in this book?

A. Yes, sir; prior to 1871.

Q. These bonds, before they could be issued at all, had to be countersigned by the trust company, had they not?

A. Yes, sir.

Q. And five hundred of them were so countersigned and issued?

A. Five hundred of them were countersigned and delivered to the company.

Q. To be disposed of by the company?

A. To do what the company chose to do with them.

Q. You think that this 75 was in the number?

A. Yes, sir; and they were numbered somewhere between two hundred and five hundred.

Q. You speak of 300 of them having been returned to Condict and Lazare?

A. Yes, sir.

Q. They were contractors for the company?

A. No, sir; not Condict; Lazare was.

Q. You speak of Condict and Lazare; what do you mean?

66 A. They were returned to them as members of the executive committee; that is the way I connected them; Mr. Condict was not a contractor with the company.

Q. And after they were returned they disposed of 200 of them to persons to whom the company was indebted?

A. Yes, sir.

Q. And of the remaining hundred this 75 was part?

A. Yes, sir.

Q. The by-laws of 1871, which speak of the executive committee doing such things as the board from time to time shall require it to do, or equivalent words; when first was there any action of the board on that subject?

A. Several months afterward; I think at the meeting on the 3d of July a resolution was passed conferring upon the executive committee power. If you will allow me to refer to the record I can give you the date.

Q. Certainly.

A. Here it is (indicating). It is a resolution offered by Mr. Condict; that is the resolution passed on the 3d day of July, 1871.

Q. It is the same resolution as the other one?

A. Yes, sir; it confers upon them the same power that the old committee had, and I presume the intention was to put this committee in the same position that the old one was.

Q. Mr. Risley, the financial transactions of the committee were largely in the city of New York, I suppose?

67 Yes, sir.

Q. And its directors resided, most of them, in the State of Indiana?

A. Yes, sir; still there were a good many here in N. Y.; I think it was the intention to have enough here to have a quorum.

Q. How was it before Mr. Hammond became president?

A. The year before I think there must have been a majority; I think there was a majority of the board of 1870 here.

Q. Do the minutes disclose any meeting of a quorum of the board between the 3d of May and the 1st of July, 1871?

A. There were several meetings called, but my recollection is there was not a quorum present until the meeting of the 3d of July, 1871. We were all waiting the action of Mr. Hammond and his friends at that time.

Q. What was the next preceding meeting of the board before May 3d, '71?

A. I cannot tell you, sir, from recollection. (Referring to book.) It appears to be May 5th, 1870.

Re-direct examination by Mr. Macoughtry:

Q. Was there any action upon the part of the board conferring any power upon the executive committee from the 3d day of May, 1871, to the 3d day of July, 1871?

A. No, sir; the records do not disclose any, and there was none.

68 Q. I intended to ask you, Mr. Risley, in my former examination, if you made any effort to get these bonds from Mr. Condict after they were known to be in his hands?

A. Yes, sir; I did. I had several interviews with Mr. Condict on the subject.

Q. What did you do in reference to endeavoring to get the 75 bonds from Mr. Condict, and what was the date of your action?

(Objected to by Mr. Potter.)

A. I cannot give you the dates further than to say that it was after the meeting of the 3d of July, 1871, and some time along between that and the latter part of the year; that summer and fall, I should say, perhaps in the fall, but I cannot fix the date definitely. I had repeated interviews with Mr. Condict, some of them at the request of Mr. Hammond and some at my own instance, in regard to these 100 bonds. I cannot detail any of the conversations that I had with him; I remember the fact that I had repeated conversations with him about it.

Q. What was the object of those interviews?

A. My object was to get him to return the bonds to the company. We were then considerably embarrassed by not having the bonds for the purpose of exchange. All the rest of the bonds out were ready to be exchanged for the new issue, and those bonds there was a good deal of difficulty about, and I went to see Mr. Condict, supposing, when I first saw him, that he had the bonds in his own possession, and he did not disclose to me for quite a time that

69 he did not have them in his possession; on the contrary, he said that he would return them, that he was making his arrangements to do so; he professed to have claims against the company which they ought to pay him, and I remember he made a statement to the company, including most of the items that I see in this printed pamphlet, in which he claimed that he had advanced sums of money for the company, and against those advances he held this $100,000 bonds. I remember on the face of the account there was a foot-line saying: "Against the above we hold $100,000 of the first m'tg'e bonds of the Indiana & Illinois Central Railway Company," and he always promised that he would get those bonds and return them, but he never did it.

Q. Do you know, and if you know, state whether the indebtedness of the company to him has been paid, and when it was paid?

(Objected to by Mr. Potter; taken subject to obj.)

A. All that was legitimate indebtedness has been paid; I did

not pay it myself, but as an officer of the company I was informed and believe it was paid.

Re-cross exam'd by Mr. Potter:

Q. By legitimate indebtedness you mean the indebtedness that you think the company owed?

A. Yes, sir; money that he had advanced for the company. I knew what sums he had advanced for the company.

70 Q. When he promised to return the 100 bonds, did he promise to return them without payment of the amount he claimed?

A. I do not know that he made that a condition, sir; I do not think he did. At first he seemed somewhat embarrassed in talking about this matter, and was not very communicative. He professed to have claims against Mr. Lazare which Mr. Lazare ought to settle, and all that sort of thing. It was a thing I did not know anything about and had nothing to do with, and he seemed to muddle the thing up, and felt some embarrassment, I thought, about it, but he did not tell me for a long time where the bonds were; but afterwards I found out where the bonds were; I don't know whether Mr. Condict told me or somebody else.

Q. You spoke of a paper containing a statement of claims of Condict against the company; that "we" hold $100,000 bonds of the company. Who was "we?"

A. Condict and Company he referred to; that professed to be a statement of Condict and Co.

Mr. HAMMOND.—That is at the end of a communication in which Mr. Lazare states the indebtedness of the company; it was not Mr. Condict's statement, but Mr. Lazare's statement.

Mr. RISLEY.—My impression was that it was a statement of Condict to Lazare.

71 Q. Was this a statement by Condict to the company, or which came in any way into its possession?

A. My best recollection now is that it was a statement made by Mr. Condict to Lazare.

Q. Did it come into the company's possession?

A. That I can't say just at the present moment; it was very much this statement, as I said.

Q. Mr. Risley, look at the communication upon page 355 of the minutes, and say if that is the statement to which you refer.

A. (After examining.) I think it is possible that that is the statement that I refer to. I distinctly remember having seen such a statement, and it is quite possible that this is the statement that I saw.

Adjourned until Saturday, the 15th inst., at 11 A. M.

NEW YORK, *Jan. 15th*, '76.

Present, the master and the respective counsel, as of the 14th inst.

MR. HAMMOND, sworn and examined on the 14th inst., stated in reply to a question put to him in his examination by Mr. Potter, relative to the production of letter written by him (witness) to J. Elliott Condict, that he had looked for copies of such letters and had been unable to find any.

No further witnesses being present, adjourned until Monday, the 17th inst., at 11 A. M.

NEW YORK, *Jan. 17th*, '76.

72 Present, the master and counsel for Mrs. Sprague and the railroad company, as of last meeting.

JOHN E. RISLEY recalled on behalf of the defendants.

Ex'd by Mr. Macoughtry:

Q. Mr. Risley, you can state until what time you retained your directorship in the Indiana and Illinois Central R. R. Co., and to what time you retained your secretaryship.

A. I continued as a director from the time of my first election all through the year 1870, until I was re-elected the 3d of May, 1871, and I continued to be a director until I resigned in favor of Mr. George M. Pullman, and my recollection is that that was in January or February, 1872; possibly later than that. I remained a director up until that time. I remained secretary of the company until the annual election at the stockholders' meeting, which occurred in May, 1872.

Q. You can state, if any, what books of the company, treasurer's or otherwise, were in your possession during the time of your secretaryship.

A. Well, during the time that I was secretary I had all of the books properly pertaining to the secretary's office, and a very considerable part of the time I had the treasurer's books also.

Q. Until what time did you have the treasurer's books?

73 A. I could not state the date that I delivered them over to Mr. Haight without referring to that book; but I had them from the first of May up until the date of Mr. Haight's first entry in the book. By referring to that record you will see.

Q. In August that was.

A. Yes, sir; I had them up until that time, if August is fixed as the date—August, 1871. I had the seal of the company, and, I think, all of its files and records, up until that time.

Q. Mr. Risley, you may state, if you know, whether the Indiana and Illinois Central Railroad Company ever received any value for the seventy-five bonds in controversy; and if any valuable consideration, what was it?

(Objected to as proving a conclusion of the witness, and not the fact. Taken subject to obj.)

A. They never received any value for them.

Q. Do you know that?

A. I do know that they never received any value for them.

Q. You can state whether the books of the company, up to the time they were surrendered by you to Mr. Haight, showed the reception of any value for them.

A. They did not; no officer of the company supposed that the company had ever parted with the bonds, and as a matter of fact they had not. They were taken by Mr. Condict, if taken at all, without any right.

74 (Counsel for Mrs. Sprague objects to the last portion of answer.)

Q. You can state, in the event the company had received any value for the bonds, what opportunities you would have had of knowing that fact.

A. I should have known it. I knew all about the affairs of the company at that time. I kept the records and was well informed of its transactions; was largely interested in the affairs of the company.

It is understood between counsel for the parties that the paper by which the existing bonds were substituted for the prior issue of bonds, such paper being now in the possession of Mr. Hammond, signed on behalf of the railway company by John E. Risley, as secretary, and on behalf of Mrs. Sprague by John M. Whiting, as her attorney and trustee, shall be attached to this record.

It is agreed between the Indiana and Illinois Central Railway Company and John M. Whiting, trustee for Mrs. H. P. Sprague, administratrix of the estate of John H. Sprague, deceased, that in exchanging seventy-five bonds of said company, for one thousand dollars each, secured by a mortgage executed by said company, bearing date July 1st, 1871, for seventy-five other bonds, also of said company, secured by a mortgage bearing date April 1st,

75 1870, neither of said parties waives or prejudices any right whatever, either legal or equitable.

Dated New York, April 25th, 1872.

THE INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY,
By JOHN E. RISLEY, *Secretary.*
JOHN M. WHITING,
Atty. and Trustee for estate J. H. Sprague.

It is also placed upon the record that Mrs. Sprague produced before the master her books, and the book-keeper who kept them, and also the original check made by her, cancelled, and a statement signed by Condict & Company, and delivered to her at the time the entries in the books were made, in pursuance of the request counsel for the R'y Co. made on Friday the 14th inst., and the same were examined by counsel, and no further occasion for their use existing, they were returned.

Exam. of Mr. RISLEY continued:

Q. You can state, Mr. Risley, whether you have lately made any examination of the books of the Indiana and Illinois Central R'y Co., with a view of ascertaining the fact as to whether the books show any receipt by the company of any value for the bonds in controversy, and what was the result of such examination.

(Objected to by counsel for claimant. Taken subject to obj.)

76 A. I have, within a few days, examined the treasurer's books, and they do not disclose that anything was ever received by the company for those seventy-five bonds.

Cross-examined by counsel for Mrs. Sprague:

Q. Where was the company first organized, Mr. Risley?

A. That I can tell only from the records, but it must have been organized—the company was composed of two companies which existed prior to the consolidation; the two were consolidated, I think, in 1853; that is my recollection of the date.

Q. Prior to that time had any part of the road been built?

A. No, sir.

Q. When was the first actual construction of the road commenced?

A. The road was partially graded—this I can only state from general knowledge of affairs—I think in 1854 or '55.

Q. To what extent?

A. Oh, well, I could not tell, sir. There were a good many miles of grading done at the time. I ought to state that it was long before I had any connection with the road.

Q. Your connection commenced in what year?

A. In 1867 or '8.

Q. At that time how much of the road had been completed?

77 A. There was nothing done on the road toward grading it from the time work was suspended, which was along in '55 or '6, or somewhere there, up until after 1868, or about there.

Q. State the fact precisely. When you became connected with the road, in 1867 or '8, some portion of the grading had been done?

A. Had been done several years before; yes, sir.

Q. As early as 1854 or '5?

A. Yes, sir; somewhere along there.

Q. After that, and between the time of your becoming associated with the road in 1872, an additional portion of the grading was done?

A. Yes, sir.

Q. To what extent was this latter grading done?

A. Well, to no very considerable extent, sir.

Q. At what point was it done?

A. It was done in Illinois.

Q. At what point had the previous grading been done?

A. Mainly in Illinois, but some part of it in Indiana.

Q. So that on the first day of January, 1872, how much of the road had actually been graded?

A. That I cannot state, sir, because the grading had been done along at different spots, and how much had been done I could not state.

Q. In 1872 was there any work done upon the road?

A. I have an impression that there was, sir; but I was not connected with the road as a director, or as one of its officers, after May, 1872.

78 Q. Whatever was done toward the completion of the road, and of a substantial character, excepting the grading you have mentioned, has been done under Mr. Hammond's administration?

A. Most of it; yes, sir.

Q. Do you know, when the company obtained this land grant, if it was a land grant?

A. It was not a land grant; it was the land given by private individuals to the company in the shape, some of it, of donations, and some of it in the shape of subscriptions for the stock of the company.

Q. To what extent do such lands exist?

(Objected to by counsel for the railroad company. Taken subject to obj.)

A. Well, it would be a matter of guess with me. I should say, however, originally the company held forty or fifty thousand acres of land; possibly more than that.

Q. And was that the fact when you became associated with the road?

A. They owned then about 35,000 acres of that land; some of it had been sold before that time.

Q. Do you know what became of the proceeds of those sales?

A. Only from hearsay. I was advised that they had gone into the construction of the road, paying for the grading that been done and the general management of the company's. That is only hearsay on my part, though I gained some portion of it from

79 examination of the records.

Q. That grant or donation of lands continued during your connection with the company?

A. Yes, sir. I suppose you mean the company continued to own the lands during my connection with the company. That I will answer in the affirmative.

(Counsel for the railway states that the lands were obtained under special legislation authorizing the company to take the lands for subscriptions for stock.)

Q. Were there any sales of lands made during your association with the company in any way?

A. Yes, sir; there were some small sales made and some moneys collected from purchasers who had bought before that time; there was very little sold during my connection with the company, not exceeding a few acres. At least that is my recollection. I have not had occasion to examine that part of the record.

Q. You have testified in respect to any portion of the avails of those bonds claimed by Mrs. Sprague going to the railway company; state precisely how you know that fact.

A. Well, I know it, first, because I was a director; I know it, second, because I was secretary, and had charge of the books and records of company; I knew it, third, because I was
80 largely interested in the company. I was in frequent, I should say almost daily, conversation with the various officers of the company, and was regarded at the time as one of the counsellors and advisers in the general management of the work, knew about its obligations, receipts, and condition, and was instrumental in negotiating with parties to go on and complete the road. The Hammond party and others and I had frequent interviews with Mr. Condict during his connection with the road about these very bonds; had frequent conversations with Mr. Condict about these seventy-five bonds.

Q. You were, I believe, counsel for Mr. Lazare, were you not, at one time?

A. Yes, sir.

Q. Ever for Mr. Condict?

A. No, sir; I cannot say that I was ever professionally employed by Mr. Condict. He has very frequently advised with me about matters, but he never paid me anything.

Q. Did he not advise with you, during the short period that he had connection with the company, from time to time?

A. Oh, I was in frequent conversation with him; daily, I should think, sir; particularly at the time Mr. Lazare was out on the line of the road.

Q. You then understood that Mr Condict had an arrange-
81 ment with Mr. Lazare under which he claimed to have an interest in the contract which Mr. Lazare held?

A. I knew all about that; I was consulted by the parties.

Q. The fact was so?

A. Yes, sir; the fact was so, that Mr. Condict bought a part of Mr. Lazare's interest in the matter.

Q. And he was at one time claiming, at any rate, to act as the financial manager or agent of the copartnership, or general interest in N. Y., was he not?

A. Well, I could not say that, sir.

Q. Do you not know it to be the fact?

A. No, sir.

Q. I speak of his claim. I am not asking you as to the fact; I am asking you as to what Mr. Condict claimed to be doing at that time.

A. I am not aware that he claimed anything of the kind. I can state what his claim and relation was, if you wish me to state, sir.

Q. I think it appears sufficiently in the former testimony; that is to say, that he had bought an interest in Mr. Lazare's contract.

A. And agreed to advance to Mr. Lazare a certain amount of money, which was not to be less than $800,000.

(Objected to by Mr. Macoughtry.)

Q. Mr. Lazare, at that time, was actually prosecuting the work, was he not, on the line of the road, to some extent, at least?

82 A. Yes, sir; to some extent. He had engineers on the line of the road, and was personally there.

Q. Was there not construction actually going on as well?

A. Well, I think not, sir; I do not think any grading was done during that time.

Q. I mean what was being done?

A. Mr. Lazare was out along the line of the road with a corps of engineers, preparing work, but he made no contracts for work being actually done in the shape of grading.

Q. Without attempting to specify for what purpose Mr. Condict actually made advances, you are cognizant of the fact of his having made advances claimed by him to be on account of his contract with Mr. Lazare, are you not?

A. I do not know that he made advances claiming in that way. Mr. Condict paid some small claims amounting to a few hundred dollars. The fact is this: That Mr. Haight had not accepted the office, and we had no treasurer then acting, and Mr. Condict undertook to advance the money and get it back from the treasurer of the company; at least I suppose that he was to get it back. Then I know another sum of $10,000, which was borrowed of Mr. Ely, upon pledge of the securities of the company, and that money was paid to Mr. Lazare, or rather paid upon his draft upon Condict and Company; Condict and Seaman borrowed the money on

83 the securities of the company, and took up the draft.

Q. Do you know to what extent Mr. Condict claimed to have made advances during that period?

(Objected to by Mr. Macoughtry. Taken subject to obj.)

A. I have seen Mr. Condict's statement rendered to Mr. Lazare, and know so far as that goes.

Q. I do not ask you for its contents, but I should like to have you state to what extent he claimed at that time to have made advances for the benefit of the company.

A. I do not know to what extent he claimed for the company; the account I saw was his account to Mr. Lazare.

Q. You referred to an examination of the company's books recently; when did you make it?

A. Within this past week.

Q. I suppose you made it in reference to this investigation, did you not?

A. Yes, sir.
Q. Where did you make it?
A. Here, at the office of the company.
Q. What did the books consist of?
A. The treasurer's books.
Q. I ask what they consisted of?
A. I don't know what you would call the treasurer's books; the journal and his ledger, containing journal and ledger accounts.

Re-direct exam'd:

84 Q. Mr. Condict was not a contractor with the company, was he?
A. No, sir.
Q. The $10,000 paid by Mr. Ely was the amount of money for which the $25,000 bonds were hypothecated, wasn't it?
A. No, sir; there were some bonds hypothecated; I do not re-remember the exact amount; Mr. Hammond could tell you.
Q. Was that amount paid?
A. That was paid by the company after Condict and Seaman resigned.
Q. The few hundred dollars which you have spoken of as advanced by Mr. Condict has been paid by the company?
A. It has been, so I have been informed.
Q. Do you know that it has been paid?
A. Well, I am referring there to the directors' expenses that Mr. Condict advanced.
Q. That is what you mean by the few hundred dollars?
A. Yes, sir.
Q. Now, has that been paid?
A. My belief is that it has; I was always so informed; I did not see that part paid; those printing bills charged in his account there I know were paid by the company; Mr. Hammond and myself paid it.
Q. You have spoken of the interest acquired by Mr. Condict in the contract made by Lazare with the company; you can state, if
85 you know, as to when Mr. Condict acquired that interest in that contract.
A. The date of the contract between Lazare, on the one part, and Condict and Seaman on the other, is April 10th, 1871; the written contract is dated April 10th, 1871; but I believe it was not executed until some days afterward.
Q. That is the interest which Mr. Condict acquired in this contract of Lazare's?
A. Yes, sir.
Q. That is in April, you think?
A. April 10, 1871, I think, sir, is the date.
Q. You can state as to whether Mr. Condict was recognized by the company as ever having made any contract with the company.

A. Not at all.
Q. Had Mr. Condict made any contract with the company?
A. Not at all, sir.

Re-cross-exam'd:

Q. Will you state the dates of those original contracts?
A. The original contract between the company, on the one hand, and Champlin and Lazare on the other, was dated the 16th of September, 1869. That contract was modified several times thereafter, first on the 22d of September, 1869, and second on the 24th of November, 1869, and on the 4th of October, 1870, Mr. Champlin sold, assigned, and transferred, in writing, all his right, title, and interest in the contracts to Mr. Lazare.

86 JOHN M. WHITING, being called as a witness on behalf of the claimant, and duly sworn, testified as follows:

I am a counsellor-at-law, doing business in the city of New York; I reside in Orange, N. J.; am upwards of 40 years of age; I have been, since the year 1869, the legal adviser of the late John H. Sprague, and since his death, which was in 1868, the adviser of his estate; Mrs. Sprague is the executrix of that estate, and was appointed soon after his death, in 1868; some time in the spring of 1871, and I should think early in the month of May or the latter part of April, I was called upon by Mrs. Sprague and her son in respect of certain bonds which she then claimed to hold, issued by the Madison and Portage Railroad Company, as I recollect the corporate title of the company, and I then learned substantially what Mrs. Sprague herself testified to on the 14th inst. I was very much startled and concerned at hearing that Mr. Condict had sold her those bonds, and it led to a great many interviews with Condict and others. Some time after, and not very long, a proposition was made by Condict to me to exchange those bonds, and for Mrs. Sprague to purchase, in consideration of their delivery to
87 him, the bonds of the Indiana and Illinois Central Railway Company. This proposition was communicated to Mrs. Sprague, either by me, as I recollect, or by Mr. Condict at my suggestion, and I am very sure that a written communication passed from him to her on the subject; but the remainder of the negotiations, except, perhaps, a single conference with Mrs. Sprague —it may have been more—was conducted by me.

88 Under my advice Mrs. Sprague consulted several of her friends, who were well known to the financial world here, and were experienced men of business, and she also consulted with me and requested me to consult with them; I saw three of them—Mr. Phileteus Holt, since deceased, a merchant of character; Mr. Ketcham, whom you saw here the other day, quite a respectable and eminent merchant here; and Mr. Wm. E. Dodge, sr. They were all friends of the late Mr. Sprague, and I felt very solicitous

that Mrs. Sprague should act intelligently and obtain all the information that was possible on the subject. I was called upon, as I recollect, twice by Mr. Billop Seaman, who represented himself to me to be a director, and to hold some official or special relation to the railroad company. Until recently I had the impression that he was an officer of the company; I have since learned that he was a member of the executive committee. Mr. Seaman made very extended statements to me on the condition of the road and of its prospects, and both he and Mr. Condict, who, I think, called upon me at different times, went very largely into the matter, and great reliance was placed both upon the immediate prospects of the road, owing to the fact that Mr. Hammond, through his influential and extensive connection, in New England particularly, would be able to give the enterprise a very substantial and successful support, and that the road was sure to be built. They represented the land grants, or possessions of land, of the company as being very valuable; that the coal interests there were very large, and they gave me a great deal of statistics, whether tabulated or not I have now forgotten, in regard to the resources of the country, the needs of the country, the desires of the inhabitants of the country through which the road passed to aid and promote its construction and operation, and referred me to sundry subscriptions of cash, I think, for the stock. All this information I communicated to Mrs. Sprague, and I desired Mr. Seaman to call upon one or more of the gentlemen whom I have named, and, as I learned, although I was not present at the interview, he did call upon Mr. Dodge certainly, and perhaps upon others.

89

Mr. Condict's statements were of the fullest character, and I would state, if it is desired, what they were; it is enough to say that they were of the same general description as I have already stated of Mr. Seaman, and Mr. Seaman confirmed them; what they were specifically I should have some difficulty in stating, except of the various subjects which I have already indicated. At all events, after considerable discussion and delay, I was advised by Mrs. Sprague and one, and perhaps three, of the gentlemen whom she has named, that they thought that the negotiations might safely go on, and authorized me to conclude it, and thereupon I did exchange the two sets of bonds, I understanding from Mr. Condict, and of course from Mrs. Sprague, that she was the holder and owner of the $75,000 of the bonds of the Madison and Portage road, and that it was proposed she should purchase the bonds in question, giving the Madison and Portage bonds as the consideration for the purchase and exchange. I use the word purchase because Mrs. Sprague then claimed it to be so. I, on my part, was indisposed to regard it as a finality, and I insisted that Mr. Condict should hold himself responsible for the debt, which he consented to do. So far as, in all my investigations, I had the slightest information, suspicion, knowledge, or belief, there was nothing

90

* notwithstanding the matter had been considered.

affecting the title to these bonds, or the good faith with which they were transferred to Mrs. Sprague, and I had not, so far as I know, or so far as I have the slightest recollection at present, the least intimation but what Mr. Condict had the full right to transfer them, and that by doing so Mrs. Sprague would get an absolute title. Had I had any other suspicion or knowledge, I should not have allowed the transaction to go on.

That is, in general terms, what I now recollect to have been the transaction. I wish to add that Mr. Condict professed at my interviews with him, and I saw him very early after Mrs. Sprague called upon me, to have the strongest desire that ~~this should be paid.~~ He stated that he did not desire to have her lose a cent on these bonds; her husband had been his friend, and she had been kind to him, &c., and he was determined she should be paid; that she should not lose anything. And I was only too willing to put him on that footing, and he did subsequently assign to her, or pretended to assign, all his right, title, and interest, of any kind or nature, arising out of any contracts or relations or negotiations which he held with this company, or any of the parties who had ever had any association with him, investing Mrs. Sprague with the entire ~~estate~~ by a verbal assignment made time and again. and a written assignment as well.

the sums paid by Mrs Sprague should be repaid to them

91

Cross-examined by Mr. Risley:

Q. You state you were startled when you ascertained that Mr. Condict had induced Mrs. Sprague to buy the Madison and Portage bonds, and that you ascertained that fact in the spring of 1871. Will you be kind enough to state why you were startled?

A. I regarded Mrs. Sprague as acting in a purely fiduciary relation to her cestui que trusts as administratrix. I think at that time three of them were not of age, and I thought that it was a very unwise investment, and one which he had not any business to have advised her to make; and I recollect the road was not complete, or if complete, that its earnings were very small, and its position not of a desirable kind, and I felt that, under the circumstances of the purchase by her, it was a very improper thing for him to have advised or brought about. She had received no income since she had received them, and I became satisfied that she would not receive any, ~~from~~ for some time to come.

Q. You state that you had several interviews with Mr. Condict, and with other persons, in regard to the investment. Be kind enough to state who the persons were, and what the subject of those interviews was specifically.

92

A. The persons I had in view were those whom I have already named, Mr. Billop Seaman, and others.

Q. I am inquiring now about the matter of the Portage bonds.

A. I did not mean to be understood that I had any interview with any person in respect to the Madison and Portage bonds, at that time; I had subsequently.

Q. When did you have any interviews?

A. Well, I cannot say; it may have been a fortnight and it may have been longer; it may have been a month; probably within a month or six weeks after I first learned it.

Q. So that before she exchanged them for the Indiana bonds you had these interviews?

A. It may have been; I should suppose that it was.

Q. Do you remember who the persons were with whom you had the interviews?

A. I went to the office of Condict & Co., and saw Mr. Campbell, the president, and had a conversation with him. I went to the office of the Milwaukee and St. Paul Company, or what is generally known as the La Crosse Railroad Company. I there saw Mr. Russel Sage and Mr. N. A. Cowdrey. My conversation was with Mr. Cowdrey, I think, it may have been with both.

Q. What was the purport of that conversation with Mr. Cowdrey and Mr. Sage?

A. It was in respect to the status of those bonds. They
93 made a claim of irregularity on Mr. Condict's part in obtaining those bonds.

Q. They wished Mr. Condict to return them to the company; was not that the fact?

A. I am unable to say what form their claim took; they made some complaint as to Mr. Condict's having obtained them. My impression is Mr. Campbell had allowed Mr. Condict to take them. Mr. Campbell, as president had delivered them to Condict. I am utterly unable to give anything in respect of the facts or merits of that claim by them.

Q. But you remember there was some question as to Mr. Condict's title?

A. Yes, sir.

Q. Is the Mr. Campbell, to whom you refer, the same gentleman referred to by Mrs. Sprague, in her testimony, when she spoke of having held Mr. Campbell's notes, at one time, as collateral to the loans?

A. I suppose so; he was an elderly gentleman, whom I understood was the president of the company.

Q. From whom did you ascertain that Mrs. Sprague had taken possession of the Madison and Portage bonds?

A. From whom did I ascertain that?

Q. Yes, sir; from whom did you ascertain that?

A. I think Mrs. Sprague called upon me and told me.

Q. Can you fix the date when you ascertained this fact?

A. No, sir; I cannot.

94 Q. Whether it was prior to the first of May, or subsequent to that, in 1871?

A. My recollection is it was about that time.

Q. About the first of May?

A. Yes, sir; it may have been after or before; but it was about that time; that is my impression.

Q. Did you have any interview about that time, or soon after, with Mr. Condict, with reference to his title to the bonds, and his right to dispose of them, the Madison and Portage bonds?

A. I did at some time before the transaction was closed.

Q. That is, while Mrs. Sprague had the bonds in her possession, probably?

A. Yes, sir.

Q. You mean by the transaction the exchange for the Indiana bonds?

A. Yes, sir.

Q. You insisted, in your interview with Mr. Condict, that he should make this sum of money that he had gotten from Mrs. Sprague good in some way?

A. I do not know that I did at that interview; I did at an interview.

Q. Well, do you know whether it was prior or subsequent to that date?

A. To which date?

Q. About the first of May you are talking about now.

A. It was after I first learned that Mrs. Sprague had the bonds.

Q. It was after you first learned that she had these bonds?

A. Yes, sir.

95 Q. Wasn't it about the time that Mr. Condict made the assignment of his contract with Mr. Lazare?

A. Oh, no.

Q. There must have been some claim at that time that he was responsible, because he made that assignment.

A. That assignment, as I recollect, was made in November, 1871 or '72; I don't know which.

Q. That assignment was made for the purpose of giving her a further security for her money?

A. No.

Q. Giving her a further assurance of getting her money back, I understand you to say?

A. You may, perhaps, call it that. My great desire was that the Sprague estate should lose nothing, for I knew what a very great hardship it was.

Q. You felt that the investment in unbuilt railroads was not a very satisfactory way for money belonging to estates to be invested, I suppose?

A. I have stated on that subject how I felt.

Q. I will ask you, Mr. Whiting, whether you ever heard that Mr. Condict was likely to be arrested if he did not return those Madison and Portage bonds?

A. I have no recollection of any such statement having been

made; it has been made recently here; I do not recollect that a threat of that kind was held out in my hearing at that time.

Q. Well, did you hear any talk of any litigation at all
96 against him in regard to the bonds or a claim being made against him for the Madison and Portage bonds?

A. I am unable to say, as I said before, what the precise claim was. I knew who Mr. Sage was, and Mr. Cowdrey very well, and I knew that they claimed. I was then informed that there was some irregularity of some kind on Condict's part; I investigated it as well as I could through Condict; that was my object in going to his office, and also talking with this gentleman, Mr. Campbell; after doing so I stated both to Mr. Dodge and Mrs. Sprague what my conclusion was, to wit: that I thought that, so far as any question of title to these bonds was concerned, or any rights of Condict's was concerned, that Mrs. Sprague had an unquestionable title to them; I was very careful to have that understood.

Q. But had you arrived at any conclusion as to what Mr. Condict's title would have been had the bonds remained in his hands?

A. I thought that Sage and Cowdrey treated him with injustice in the matter, to a certain extent at least. I thought that he had a clear right to be protected, as he then claimed he ought to have been, by them. He claimed to hold those bonds by absolute transfer, but, as I said before, I cannot give the facts in regard to it. I was very careful to get all the information I could about it, and I called upon Mr. Dodge, at his office, and that question came up.

97 Q. Mr. Cowdrey claimed that the bonds did not belong to Condict but to the company?

A. I refer to my interview with Mr. Dodge, because that is why I am able to state what took place.

Q. I ask you whether Sage and Cowdrey claimed that the Madison and Portage bonds belonged to the company and not to Condict?

A. That would be an inference from *what* took place; whether such a claim as that was formally made I am unable to say.

Q. That was your inference from what was said?

A. It would be an inference if I was to testify to it. They claimed, as I said before, some irregularity of conduct on Mr. Condict's part, but, so far as I investigated it, I was unable to see.

Q. I am asking you to endeavor to remember what their claim was, not what the fact was.

A. I cannot remember what their claim was, although I have tried to do so.

Q. They claimed some irregularity about the bonds which you do not remember.

A. They did.

98 Q. See if I cannot refresh your recollection upon the point of their claim. Did not they claim that these bonds had

been placed in Mr. Condict's hands to be sold for the company, and that he had applied them to his own private, personal use? Was not that substantially what they claimed?

A. Well, I think it was, although I had no recollection of it before.

Q. I believe you have already stated that Mr. Condict assigned, or pretended to assign, to Mrs. Sprague his claim growing out of his contract with Lazare in November, 1871, or somewhere about that time?

A. It was in the month of November, either of 1871 or '72. If you will allow me to refresh my recollection on that I will tell you.

Q. Certainly, sir.

A. (After consulting memoranda.) 1871, it seems to be.

Q. What month?

A. November.

Q. November, 1871, Condict assigned to Mrs. Sprague?

A. Yes, sir.

Q. That assignment was intended to give her a further
99 assurance that she could get back the money which she had put in those Portage bonds?

A. I have already said you might call it that. I intended, if there was anything to be got out of this wreck or mass, whatever it might be, that it should go to Mrs. Sprague's payment. It was Mrs. Sprague's indemnity against loss on these bonds. That is the way to put it exactly. It was my action wholly. I do not know that anybody else had anything to do about it.

Q. Do you know whether Mr. Condict had, prior to November, 1871, surrendered up to Mr. Lazare his interest in the contract, which they had previously had together?

A. I do not know it. On the contrary, I recollect distinctly, at the interview at the time that assignment was drawn—the written assignment—Mr. Condict had written a letter, as I recollect, in which he made an agreement to deliver up all of his interest there, contingent upon certain negotiations with Mr. Hammond being
carried out, and if the arrangement was not concluded,
100 then it was to be void, etc. He came to me and stated that it had not been carried out; that the negotiations embraced certain matters, as it respected him personally, which Mr. Hammond had not carried into effect, and, therefore, he claimed his title.

Q. State, if you please, whether or not there is an action pending in the Supreme Court of New York, in which Henrietta P. Sprague, as administratrix, &c., is plaintiff, against Adolph H. Lazare and the Indiana and Illinois Central Railway Company, the object of which suit is to compel Lazare and the railway company to account to her for whatever interest Condict may have had in his contract with Lazare?

A. Such a suit was brought; it has never been prosecuted. A motion was made for an injunction in it, which was granted, and

an appeal was taken by Lazare through his counsel, Mr. Risley. Mr. Risley and I had a verbal understanding, in which I put entire confidence, that, as to Mr. Lazare, that suit is at an end.

Q. The suit is still pending?

101 A. It is pending so far as the record goes, but I have always regarded it as dead and gone, and, in view of the condition of the railway company, I have always regarded it as a perfectly useless suit to continue, because there would be nothing realized; there is nothing to be obtained.

Q. She began that action as assignee of Condict?

A. As assignee of Condict; and the action was brought at the request of a gentleman in high position in the railway company—at his suggestion?

Q. You yourself, Mr. Whiting, mainly managed the business of the exchange of the Madison and Portage bonds for the bonds of the Indiana and Illinois Central, did you not?

A. Mainly, as to its formal parts, sir.

Q. Do you remember in what capacity Mr. Condict dealt with you, whether as an individual or as officer of the Indiana and Illinois Company?

A. At first he claimed to have very considerable control in the matter; to be a director or officer—and perhaps both, my memory is not distinct as to that—in the company; that Mr. Seaman

102 was one of his associates, and very familiar with the matter; that he had been at the West, and acquainted himself with all the facts, and he (Condict) suggested this exchange. I answer your question by giving the facts and leaving you to infer the relation. I did not place him in any relation, either to the company or to himself. He came to me with statements, and upon those I acted. He asserted his entire capacity to make the exchange; that he owned the bonds; that he had made advances to the company; that they were his by the highest possible title, and made all the assertions under my very sharp and close cross-examination.

Q. Then your answer would be that you dealt with him as an individual and not as an officer of the company?

A. That is a matter of inference.

Q. He did not claim to be selling the bonds for the company, and he did claim to be selling them as his own bonds?

A. He claimed to own the bonds.

103 Re-direct examination by Mr. Potter.

Q. When Mrs. Sprague came to you about the exchange for the Indiana bonds, had she already at that time completed her purchase of the Portage bonds?

A. Oh, yes, sir; for a long time before; for several months before, as I then understood.

(Counsel for the railway co. object to the last answer.)

Q. Was it after that interview that you began inquiries in respect of the Portage bonds?

A. It was; I never knew of the transaction until the interview, in any form.

Q. Was it in the course of these inquiries about the Portage bonds and their value, that you became aware of the fact of the claim of Cowdrey and Sage, that Condict had not accounted for the purchase of those bonds?

A. I answer both parts of the question. It was in the course of those interviews. I do not recollect that they made that claim exactly.

Q. You stated that from those inquiries you were satisfied that the Portage bonds were not likely to produce income; why not?

104 A. I did not mean to state it in the way that it is taken down. I mean to say that, given that Mr. Cowdrey and Mr. Sage objected to the transaction, I relied upon their making more or less trouble to Mrs. Sprague, or taking some means, which, if it did not make any loss to her, would make her trouble; that is what was in my mind.

Q. Then you found the Portage bonds to be less valuable on account of the officers objecting to the manner in which Mr. Condict had disposed of them?

A. Yes, sir; that is about what it came to. It was my personal and professional opinion then that Mrs. Sprague's title to the bonds was absolute against Condict and against the Portage company, and I then said so repeatedly.

Q. Now, in all those inquiries, or in the interviews which you had with Mr. Hammond, or other persons, in respect of the Indiana road, was any suggestion made to put you on your guard in taking those Indiana bonds from Mr. Condict?

A. Not the slightest; but I did not see Mr. Hammond; I called upon him but he was not in town.

Re-cross examined by Mr. Risley:

105 Q. Did your interviews with Mr. Condict in regard to the Madison and Portage bonds occur prior to the date of the exchange of those bonds for the Indiana bonds?

A. They did.

By Mr Potter:

Q. Do I understand that it was subsequent to the agreement to take the Indiana bonds in exchange for the Portage bonds, that Mr. Condict consented to make a further provision for Mrs. Sprague, out of which consent grew the assignment of November, 1871?

A. Yes, sir; several months after. The exchange was made in June, 1871, I think, and the assignment was made in November, 1871.

Q. I do not ask for the assignment; I ask after the consent out of which the assignment grew.

A. It never took the definite form which is embraced in the assignment until about the time the assignment was made. He said whatever he had was Mrs. Sprague's, professing a desire that she should lose nothing. It was never expected by Mrs. Sprague that he should redeem the bonds, or anything of the kind;
106 but in case Mrs. Sprague should ever be subjected to loss, he stood, on every principle of honor and justice, bound to make her good—to see that she did not lose anything. That was the ground upon which I put it.

Q. What was Condict doing at that time?

A. He was engaged in business at 78 Broadway, I think is the number, below Wall street. It had been Condict & Company, and they called themselves bankers; railroad bankers, engaged in dealing in railroad securities.

Q. Do you know whether he is now in the city?

A. I understand he has moved to Philadelphia; that he is living in Germantown and doing business in Philadelphia.

By Mr. Risley:

Q. At the time of making these inquiries of Mr. Condict, did you know that there were judgments against him?

A. I did not know the man at all then, and I did not know of his pecuniary condition, and I do not think I know there were judgments against him until Mr. Risley informed me, at a subsequent period.

Q. In the conversation you had with Mr. Seaman in re-
107 gard to this road, Mr. Seaman talked to you as to the general character of the road, and as to the general value of the bonds; not particularly with reference to these seventy-five bonds?

A. I answer your question in the affirmative as to the first part. On the latter clause, Mr. Seaman assured me of Mr. Condict's right to assign them. My memory is very active on that point; he sustained him in every regard.

Mr. POTTER.—I desire to put in evidence copy of the minutes of the board, of Monday, July 3, 1871, beginning on page 343 of the book of minutes, omitting the trust deed, as follows:

MONDAY, *July 3d*, 1871, *twelve o'clock noon.*

Board met pursuant to adjournment. Present, Henry B. Hammond, president; J. Elliott Condict, A. H. Lazare, B. Seaman, A. L. Roach, D. J. Ely, and John E. Risley.

Judge Roach moved that the reading of the minutes of the former meetings be dispensed with; which, being seconded by Mr. Condict and put, was carried.

Mr. Risley gave notice that he would offer certain amendments to the by-laws at the next meeting of the board.

Mr. Condict offered the following resolutions, and after reading them to the board, moved their adoption; which motion being seconded by Judge Roach and duly put, was unanimously carried:

"*Resolutions.*

"Whereas it is deemed expedient and advisable that the trust deed or mortgage heretofore executed by this company to the Union Trust Company of New York, trustee, dated the first day of April, 1870, to secure the mortgage bonds of this company, to the amount of two million seven hundred and fifty thousand dollars, consisting *of* two thousand seven hundred and fifty bonds of one thousand dollars each, and all bonds issued under and intended to be secured by said trust deed, be cancelled, and that new bonds be issued, and that such new bonds be secured by a new deed of trust: it is, therefore,—

"Resolved, 1st, That the president and secretary of this company, in conjunction with the said Union Trust Company of New York, trustee, are hereby authorized and directed to cancel and destroy all of the bonds of this company secured or pur-
109 porting to be secured by the said deed of trust or mortgage, whether executed and delivered or otherwise, and the said president and secretary are further authorized and directed to deliver to the present holders of such of said bonds as have heretofore been executed and delivered, and who have already, or who shall hereafter, surrender their said bonds for exchange, new first mortgage bonds of this company, as soon as such new bonds shall be prepared and executed, in lieu of the said bonds now held or owned by said persons, and that the said deed of trust or mortgage be discharged on behalf of this company; and that the said Union Trust Company of New York, trustee, be and is hereby requested to execute and deliver to this company an instrument releasing and reconveying to this company the property mentioned and described in said deed of trust; and the said president and secretary are hereby authorized thereupon to execute, in the name and under the seal of this corporation, to the said Union Trust Company
110 of New York, trustee as aforesaid, an instrument releasing and reconveying to this company the property mentioned and described in said deed of trust; and the said president and secretary are hereby authorized thereupon to execute, in the name and under the seal of this corporation, to the said Union Trust Company of New York, trustee as aforesaid, an instrument releasing and exonerating it from all duties and responsibilities imposed upon it by the provisions of the said deed of trust, and by its acceptance of said trust.

"2d. That the president of this company be and he is hereby authorized and directed to execute, in the corporate name of this company, three thousand bonds of one thousand dollars each, pay-

able in thirty years after their date, to the bearer, with interest at the rate of seven per centum per annum, exclusive of tax, payable semi-annually, in New York or London, principal and interest payable in gold coin, and the said bonds shall be of the tenor and substantially of the form of bond embodied in the form of trust deed or mortgage set forth in the next resolution, and shall be at-
111 tested by the secretary of this company and the corporate seal be thereto affixed, and that the said three thousand bonds, when so executed, be delivered to the said Union Trust Company of New York, trustee, and that none of the same be issued until countersigned by the said Union Trust Company of New York as trustee.

"3d. That, to secure the payment of the bonds and interest provided for in the preceding resolution, the president of this company is further authorized and directed to execute a deed of trust or mortgage upon its railway, franchises, and all its corporate property specified in the mortgage or deed of trust following to the Union Trust Company of New York, as trustee, containing the provisions and stipulations, and of the tenor and form following, to wit:"

Then follows the form of the trust deed.

I also offer the resolution, beginning at resolution 4 of the same day, on page 353, and the remainder of the minutes of that day, as follows:

"Resolution 4th. That none of the three thousand bonds this day authorized to be executed shall be negotiated, issued, used, or applied to any purpose, or pass out of the hands of the said
112 Union Trust Company of New York, until the said trust deed heretofore executed by this company to the said Union Trust Company, dated April first, 1870, shall be annulled by a full and valid release, and until all the bonds issued as intended to be issued under or in pursuance of said last mentioned trust deed, shall have been surrendered and cancelled.

"5th. That all resolutions heretofore at any time made authorizing the issue of bonds of this company, or trust deed, mortgage, or other conveyances of all of its property, real or personal, to secure such bonds, except the resolutions authorizing the issue of three millions of dollars of the first mortgage bonds of this company, and the executions of the mortgage or deed of trust to secure the same, are hereby rescinded, revoked, and vacated.

"Resolution 6th. That the Union Trust Company of New York, trustee as aforesaid, is hereby authorized and directed to countersign and deliver to the executive committee of this board so many and such of the bonds mentioned in the trust deed to it, this day authorized, as said executive committee may from time
113 to time in writing request, and a receipt therefor by such executive committee, or a majority thereof, shall be a valid

and sufficient discharge of the said trust company on account or in respect of such bonds."

Mr. Condict also offered the following resolutions, and after reading them moved their adoption, which motion, being seconded by Judge Roach and duly put, was unanimously carried:

"*Resolved*, That the executive committee of this board shall possess and exercise, by a majority of its members, all the administrative and executive powers and duties of the board of directors, but only when the board shall not be in session.

"Resolution 2nd. That the executive committee shall have power to employ such engineers, agents, or other officers or persons, and shall pay them such salaries or compensation as it shall deem expedient, and until otherwise ordered by the board said committee shall fix the amount of the salaries of all officers of the company."

Mr. Condict also offered the following preamble and reso-
114 lutions, and on reading them to the board moved their adoption, which motion being seconded by Judge Roach and duly put, was unanimously carried:

"Whereas the board of directors of this company, at their meeting on the 10th day of February, 1860, adopted an order authorizing among other things the issue of preferred stock of the company to an amount not exceeding one million two hundred and fifty thousand dollars, for the purposes and with the provisions therein mentioned;

"And whereas, for the purpose of carrying out said purposes and provisions, and carrying into effect several orders of the board and of the stockholders heretofore made, and complying with the contracts of the company, it is deemed expedient to increase the aggregate amount of said preferred stock to one million five hundred thousand dollars, being the amount authorized by law; it is therefore—

"*Resolved*, That the amount of preferred stock heretofore authorized to be issued be, and the same is hereby, increased to an aggregate amount not exceeding one million five hundred thousand dollars, and the executive committee is hereby authorized to
115 adopt such form of certificate for such preferred stock as it shall deem most expedient in the premises, not inconsistent with law nor the orders of the board."

Mr. Condict also offered the following preamble and resolution, and after reading them to the board moved their adoption, which motion being seconded by Mr. Seaman and duly put, was unanimously adopted:

"Whereas certain propositions have been made to this company in relation to furnishing the necessary means to construct and equip its railroad upon the condition that the contract heretofore made between it and Champlin and Lazare be cancelled, and the prop-

erty and assets transferred to said Champlin and Lazare under said contract be reconveyed to this company; therefore—

"*Resolved*, That the assignee of said contract be requested to state to this board upon what terms he will surrender said contract and assets."

The president laid before the board a letter from Mr. A. H. Lazare to him in regard to the surrender of his contract; which, upon motion of Mr. Seaman, was ordered to lie on the table.

116 Mr. A. H. Lazare, assignee of the contract made with Champlin and Lazare, presents the following letter in answer to the preceding preamble and resolutions, viz:

To the Board of Directors of the Indiana and Illinois Central Railway Company:

Gentlemen: In replying to your resolution of this date, requesting me to state upon what terms I will surrender the contract and assets referred to, I have this to say:

Ever since the beginning of my connection with the company, I have exerted myself to the utmost in good faith to carry out the said contract.

Many unexpected obstacles and delays, from various sources, have been encountered.

They all now seem in a fair way of being overcome, and the work on the road is progressing, though not so rapidly as I could wish.

Having been mainly instrumental in bringing about the propositions referred to in the preamble of your resolutions, I thoroughly understand them and know the responsibility of the parties making them.

I have no doubt that their acceptance by the company would result in the completion of the road more speedily than it could be otherwise done.

117 Being anxious, as I have ever been, to justify the hopes and expectations of the people along the line, by giving them a completed railroad at the earliest practicable date, and believing the acceptance by the company of the propositions above referred to the best means to that end, I hereby propose to surrender the said contract and the following assets, viz:

1st. 2,550 of its first-mortgage bonds, at $1,000 each.

2d. 30,000 acres of land, more or less, being all the land owned by the company at the date of said contract.

3d. All the donations and subscriptions furnished by the company, amounting, in the aggregate, to say $680,000.

4th. All right of way now obtained and all contracts pertaining thereto.

5th. All depot grounds belonging to the company at the date of said contract.

6th. All work done upon the line, including engineer's surveys, maps, estimates, &c.

7th. The common stock now held by me, and all to which I am entitled under said contract, shall be placed in the hands of a trustee, to be selected by myself and the president of the company jointly, to be by him held for the purposes and trusts hereafter specified; Provided, that all the common stock hereafter
118 authorized, viz., an amount sufficient to make the aggregate equal to $3,000,000, shall be issued, also placed in the hands of the said trustee, which, together with that to be surrendered by me, shall be by him held upon the trusts and for the purposes following, viz: he shall hold the same until the completion of the road, unless this trust shall sooner be revoked by the unanimous consent of all parties, and upon the completion of the road he shall divide the said stock pro rata among the then holders of the preferred stock of the company. Neither the said trustee, nor any one for him, shall have the right to vote upon said stock during the continuance of said trust, upon the following terms and conditions, viz:

1st. The company shall accept the propositions referred to in the preamble to your resolution, and shall cause the work of construction to be immediately and vigorously prosecuted, and the entire road to be completed within two years from this time.

2d. The company shall issue the preferred stock, as provided in the resolution this day passed, and of the same shall issue to me $700,000, which shall be full paid stock.

3d. The company shall pay all the debts now existing, in-
119 curred on its account by Champlin and Lazare, or Lazare, Condict and Seaman, and specified in the schedule accompanying this letter.

4th. I shall remain in the board as a director, and shall be a member of the executive committee, and shall have the right of choosing two other directors, so long as I own one-fourth of the preferred stock of the company.

5th. I shall receive from the company a compensation of $500 per month, from the 3d day of May last until the road is completed, for services such as I have performed, and may be directed to perform.

6th. The company shall discharge me from all liability or obligation growing out of or in any way relating to the said contract, between it and Champlin and Lazare, and forever hold me harmless therefrom, the indebtedness being the same as hereinbefore enumerated.

7th. This offer on my part is made upon the express condition that the company shall conclude the arrangements referred in the preamble to your resolution, with the parties therein referred to, within thirty days from this date, to my satisfaction, and until that is done I will be in no wise bound by this offer, nor will I sur-

120 render the said contract, nor any of the assets enumerated, until said arrangements are completed to my satisfaction, as above stated; and if said arrangements are not completed within the time specified, I will regard all propositions relating to a surrender of my said contract, and any of said assets, as withdrawn, and shall continue the work of constructing said road as if the same had never been made.

121 The foregoing letter from Mr. Lazare having been read and discussed, Mr. Risley offers the following resolution and moved its adoption, which motion being seconded by Judge Roache, and put, was unanimously adopted:

Resolution.

"*Resolved*, That the propositions of A. H. Lazare, just read, be, and the same are, hereby accepted, upon the terms and conditions therein specified."

Judge Roache offered the following resolutions, and, after reading them, moved their adoption, which motion being seconded and duly put, was unanimously carried:

"*Resolved*, That of the $1,500,000 preferred stock, there shall be set apart 250,000, to be exchanged in accordance with the terms of the previous order relative thereto, for the common stock of the company, other than that held by A. H. Lazare, as assignee of the contract of Champlin and Lazare with the company.

"*Resolved*, That of the said $1,500,000 of preferred stock $450,000 is hereby transferred to Henry B. Hammond, to aid in raising means for the construction of the road, and to that end he is hereby authorized and empowered to transfer and assign the same at his discretion, in such amounts and to such persons as he shall see fit, for the purpose of raising the means necessary for the construction of the road, and the officers of the company are hereby empowered and directed to issue to the said Hammond four hundred and fifty thousand dollars of such preferred stock, full paid up, for
122 the purposes aforesaid.

"*Resolved*, That of the said preferred stock there is hereby appropriated one hundred thousand dollars to be transferred to H. B. Hammond, esq., in consideration of his acceptance of the presidency of the company, and undertaking to conclude the necessary arrangements for the completion of the road, and as compensations for his personal services in connection therewith, and the proper officers of the company are hereby empowered and directed to issue and deliver to said Hammond the proper certificates for two thousand shares of such preferred stock, full paid up."

On motion of Judge Roache, it is ordered that the president procure from J. K. Warren all the notes now held by him as trustee

for company, and deliver and assign the same to A. H. Lazare as his property.

On motion of Mr. Lazare, seconded by Mr. Condict, Hon. A. L. Roache is appointed attorney for the company for Indiana.

The president laid before the board the letter of resignation of Billop Seaman of the office of director of this company.

Mr. Condict moved that said resignation be accepted, and that Benjamin E. Bates, esq., of Boston, be declared elected to fill the vacancy created thereby, which motion being seconded and put, was carried unanimously.

On motion of Mr. Ely, the board adjourned to meet at the office of the company at Indianapolis, at 10 o'clock A. M., July 8th, 1871.

Attested: (Signed) JOHN E. RISLEY, *Secretary.*

123 Counsel for claimant also offers in evidence copy of form of old bond, on pages 308, 309, and 310, as follows:

UNITED STATES OF AMERICA.

No. .] STATES OF INDIANA AND ILLINOIS. [$1,000.

Indiana and Illinois Central Railway Company. First mortgage seven per cent. bond, free of all government tax.

Know all men by these presents, that the Indiana and Illinois Central Railway Company is indebted to the Union Trust Company of New York in the sum of one thousand dollars, in gold coin of the United States of America, which the said company promises to pay to the said Union Trust Company, or to the bearer hereof, on the first day of April, in the year one thousand nine hundred, in the city of New York, with interest thereon at the rate of seven per centum per annum, payable in gold coin aforesaid, semi-annually, at the city of New York or London, at the holder's option, on the first days of April and of October in each year, upon the presentation and surrender of the coupons hereto attached, as they severally become due; and in case of the non-payment of any half-yearly instalment of interest which shall have become due, and been demanded, and such default shall have continued six months after demand, the principal of this bond shall become due in the manner and with the effect provided for in the trust deed securing its payment.

124 This is one of a series of two thousand seven hundred and fifty bonds, each of one thousand dollars, of like tenor and date, numbered respectively from 1 to 2,750, inclusive, and amounting in the aggregate to two million seven hundred and fifty thousand dollars, the payment of each and all of which is equally secured by a deed of trust or mortgage bearing date the first day of April, eighteen hundred and seventy, duly executed and delivered by the said company, conveying the railroad of the said company, with its present and future equipments, property, and franchises, in

the said deed of trust or mortgage mentioned, in which said Union Trust Company of New York is trustee.

The payment of the semi-annual interest on the said series of bonds, until the completion of said railroad, is further secured by the assignment and transfer to said trustee of the proceeds of thirty thousand acres of land in Indiana and Illinois, and also of five hundred thousand dollars of city, county, and township subscriptions and donations in the said states.

This bond is entitled to the benefit of a sinking fund of twenty-five thousand dollars per annum, created by said deed of trust, to be set apart annually for the redemption of said bonds issued under and secured thereby.

This bond shall pass by delivery, or it may be registered
125 by its owner on the books of the company at the city of New York; after a registration duly certified hereon no transfer, except on the books of the company, at the city of New York, shall be valid, but its transferability by delivery may be restored at the option of the holder by a transfer to bearer registered as aforesaid.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and signed by the Union Trust Company of New York.

In witness whereof the said company has caused its corporate seal to be affixed, and the same to be attested by the signatures of its president and secretary, and has also caused the coupons hereto attached to be signed by its secretary, this first day of April, in the year eighteen hundred and seventy.

{SEAL OF THE COMPANY.} (Signed) INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY, By JOHN K. WARREN, *President.*

B. K. DURFEE, *Secretary.*

The further taking of testimony in this matter was then adjourned to , on the , 1876.

UNION TRUST CO.
v.
IND. & ILLINOIS CENTRAL R. R. CO.

Claim of Henrietta Sprague.

MARCH 10, 1876.

Present for Mrs. Sprague, Conrad Baker, esq.
126 For the R. R. company, Thos. H. McCoughtry, esq.
Before J. D. Howland, master.

HENRY B. HAMMOND, produced as a witness on behalf of the Indiana and Illinois Central Railway Co., is duly sworn and says:

I produce a certain original bond and its coupons for $1,000, No. 120, being a first mortgage bond of said railway co., dated

April 1, 1870. It is one of a series issued by the company, of which Mrs. Sprague originally held 75 of the same denomination, with all the coupons attached, for which the bonds she is now prosecuting were substituted without prejudice. I was one of the committee appointed to destroy all the bonds for which the new issue was substituted, but two were not so destroyed and this is one of that two. The difference and only difference between this bond, which I now identify and now make part of this deposition, (said bond being marked "Q" and signed as an exhibit by the master,) and the bonds of the same issue formerly held by Mrs. Sprague is that her bonds were entire, uncancelled, and with the coupons in their orignal state, while this is cancelled and part of the coupons have been detached and are now pinned on.

Indianapolis, Mar. 10th, 1876. H. B. HAMMOND.

Exhibit "Q."

127 UNITED STATES OF AMERICA.

No. 120. STATES OF INDIANA AND ILLINOIS. $1,000.

Indiana and Illinois Central Railway Company. First mortgage seven per cent. bond, free of government tax.

Know all men by these presents, that the Indiana and Illinois Central Railway Company is indebted to the Union Trust Company of New York in the sum of one thousand dollars, in gold coin of the United States of America, which the said company promises to pay to the said Union Trust Company, or to the bearer hereof, on the first day of April, in the year one thousand nine hundred, at the city of New York, with interest thereon at the rate of seven per centum per annum, payable in gold coin aforesaid, semi-annually, at the city of New York or London, at the holder's option, on the first days of April and October in each year, upon the presentation and surrender of the coupons hereto attached as they severally become due; and in case of the non-payment of any half-yearly instalment of interest, which shall have become due and been demanded, and such default shall have continued six months after demand, the principal of this bond shall become due in the manner and with the effect provided for in the trust deed securing its payment.

128 This is one of a series of two thousand seven hundred and fifty bonds, each of one thousand dollars, of like tenor and date, numbered respectively from 1 to 2,750 inclusive, and amounting in the aggregate to two million seven hundred and fifty thousand dollars, the payment of each and all of which is equally secured by a deed of trust or mortgage bearing date the first day of April, eighteen hundred and seventy, duly executed and delivered by the said company, conveying the railroad of the said company, with its present and future equipments, property, and fran-

chises in the said deed of trust or mortgage mentioned, in which the said Union Trust Company of New York is trustee.

The payment of the semi-annual interest on the said series of bonds, until the completion of said railroad, is further secured by the assignment and transfer to the said trustee of the proceeds of thirty thousand acres of lands in Indiana and Illinois, and also of five hundred thousand dollars of city, county, and township subscriptions and donations in the said states.

This bond is entitled to the benefit of a sinking fund of twenty-five thousand dollars per annum, created by said deed of trust, to be set apart annually for the redemption of said bonds, issued under and secured thereby.

This bond shall pass by delivery, or it may be registered by its owner on the books of the company at the city of New York.

129 After a registration duly certified hereon, no transfer except on the books of the company at the city of New York, shall be valid, but its transferability by delivery may be restored at the option of the holder, by a transfer to bearer, registered as aforesaid.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and signed by the said Union Trust Company of New York.

In witness whereof the said company has caused its corporate name to be signed and its corporate seal to be affixed, and the same to be attested by the signatures of its president and secretary, and has also caused the coupons hereto attached to be signed by its secretary, this first day of April, in the year eighteen hundred and seventy. THE INDIANA AND ILLINOIS CENTRAL

{ CORPORATE SEAL. } RAILWAY COMPANY,

J. K. WARREN, *President.*

B. K. DURFEE, *Secretary.*

130 *Coupons.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1900, for semi-annual interest due on that day on bond. 60.

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1899, for semi-annual interest due on that day on bond. 59

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in

the city of New York or London (at the holder's option), on the first day of April, 1899, for semi-annual interest due on that day on bond. 58
No 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1898, for semi-annual interest due on that day on bond. 57
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold
131 coin, in the city of New York or London (at the holder's option), on the first day of April, 1898, for semi-annual interest due on that day on bond. 56
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1897, for semi-annual interest due on that day on bond. 55
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1897, for semi-annual interest due on that day on bond. 54
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1896, for semi-annual interest due on that day on bond. 53
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1896, for semi-annual interest due on that day on bond. 52
No. 120. B. K. DURFEE, *Sec'y.*

132 The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty five dollars in U. S. gold coin,

in the city of New York or London (at the holder's option), on the first day of Oct., 1895, for semi-annual interest due on that day on bond.
No. 120. B. K. DURFEE, *Sec'y.* 51

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1895, for semi-annual interest due on that day on bond. 50
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1894, for semi-annual interest due on that day on bond. 49
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1894, for semi-annual interest due on that day on bond. 48
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the
133 first day of Oct., 1893, for semi-annual interest due on that day on bond. 47
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay to the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1893, for semi-annual interest due on that day on bond. 46
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1892, for semi-annual interest due on that day on bond. 45
No. 120. B. K. DURFEE, *Sec'y*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1892, for semi-annual interest due on that day on bond. 44
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin,
in the city of New York or London (at the holder's option), on the
first day of Oct., 1891, for semi-annual interest due on that day on
bond. 43
No. 120. B. K. DURFEE, *Sec'y.*

134 The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin,
in the city of New York or London (at the holder's option), on the
first day of April, 1891, for semi-annual interest due on that day on
bond. 42
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in
the city of New York or London (at the holder's option), on the
first day of Oct., 1890, for semi-annual interest due on that day on
bond. 41
No. 120. B. K. DUREEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in
the city of New York or London (at the holder's option), on the
first day of April, 1890, for semi-annual interest due on that day on
bond. 40
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in
the city of New York or London (at the holder's option), on the
first day of Oct., 1889, for semi-annual interest due on that day on
bond. 39
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in
the city of New York or London (at the holder's option),
135 on the first day of April, 1889, for semi-annual interest due
on that day on bond. 38
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in
the city of New York or London (at the holder's option), on the
first day of Oct., 1888, for semi-annual interest due on that day on
bond. 37
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in

the city of New York or London (at the holder's option), on the first day of April, 1888, for semi-annual interest due on that day on bond. 36

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1887, for semi-annual interest due on that day on bond. 35

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1887, for semi-annual interest due on that day on bond. 34

No. 120. B. K. DURFEE, *Sec'y.*

136 The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1886, for semi-annual interest due on that day on bond. 33

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1886, for semi-annual interest due on that day on bond. 32

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option,) on the first day of Oct., 1885, for semi-annual interest due on that day on bond. 31

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option,) on the first day of April, 1885, for semi-annual interest due on that day on bond. 30

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option),

137 on the the first day of Oct., 1884, for semi-annual interest due on that day on bond. 29
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1884, for semi-annual interest due on that day on bond. 28
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1883, for semi-annual interest due on that day on bond. 27
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1883, for semi-annual interest due on that day on bond. 26
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1882, for semi-annual interest due on that day on bond. 25
No. 120. B. K. DURFEE, *Sec'y.*

138 The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1882, for semi-annual interest due on that day on bond. 24
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1881, for semi-annual interest due on that day on bond. 23
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the

first day of April, 1881, for semi-annual interest due on that day on bond. 22
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1880, for semi-annual interest due on that day on bond. 21
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin,
139 in the city of New York or London (at the holder's option), on the first day of April, 1880, for semi-annual interest due on that day on bond. 20
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1879, for semi-annual interest due on that day on bond. 19
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1879, for semi-annual interest due on that day on bond. 18
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1878, for semi-annual interest due on that day on bond. 17
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1878, for semi-annual interest due on that day on bond. 16
No. 120. B. K. DURFEE, *Sec'y.*

140 The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the

first day of Oct., 1877, for semi-annual interest due on that day on bond. 15

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1877, for semi-annual interest due on that day on bond. 14

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1876, for semi-annual interest due on that day on bond. 13

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1876, for semi-annual interest due on that day on bond. 12

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option),
141 on the first day of Oct., 1875, for semi-annual interest due on that day on bond. 11

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1875, for semi-annual interest due on that day on bond. 10

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1874, for semi-annual interest due on that day on bond. 9

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35. will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1874, for semi-annual interest due on that day on bond. 8

No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1873, for semi-annual interest due on that day on bond. 7
No. 120. B. K. DURFEE, *Sec'y.*

142 The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1873, for semi-annual interest due on that day on bond. 6
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1872, for semi-annual interest due on that day on bond. 5
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1872, for semi-annual interest due on that day on bond. 4
No. 120. B. K. DURFEE, *Sec'y.*

The foregoing 57 coupons are attached to bond; the following 3 coupons are detached but are pinned to bond.

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1871, for semi-annual interest due on that day on bond. 3
No. 120. B. K. DURFEE, *Sec'y.*

143 The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of April, 1871, for semi-annual interest due on that day on bond. 2
No. 120. B. K. DURFEE, *Sec'y.*

The Indiana and Illinois Central Railway Company $35.
will pay the bearer hereof thirty-five dollars in U. S. gold coin, in the city of New York or London (at the holder's option), on the first day of Oct., 1870, for semi-annual interest due on that day on bond. 1
No. 120. B. K. DURFEE, *Sec'y.*

Endorsement on Bond.

Trustee's Certificate.

The Union Trust Company of New York hereby certifies that this is one of a series of twenty-seven hundred and fifty bonds of one thousand dollars each, secured by a deed of trust dated 1st April, 1870, to the said Union Trust Company as trustee.

THE UNION TRUST COMPANY, *Trustee*,
By I. H. FROTHINGHAM, *President.*

Both bond and coupons are cancelled, as well as trustee's certificate.

144 It is hereby agreed that the printed copy of the mortgage of April, 1870, filed herewith and marked Exhibit Z, is to be taken as part of the evidence in this case, with the same effect as if it had been originally put in evidence before the master, and it is agreed that the same is a true copy of the original mortgage of said date.

Indianapolis, April 26, 1878.

I. & I. C. R. W. Co.,
Per T. H. MACOUGHTRY, *its att'y.*
BAKER, HURD & HENDRICKS,
Sols. for Mrs. Sprague.

Exhibit Z of Testimony.

Indiana and Illinois Central Railway Co.

Trust Deed.

This indenture, made and entered into this first day of April, in the year one thousand eight hundred and seventy, by and between the Indiana and Illinois Central Railway Company, a consolidated corporation existing under and by virtue of the laws of the 145 States of Indiana and Illinois, of the first part, and the Union Trust Company of New York, of the second part, witnesseth:

That whereas, in pursuance of the power and authority in them vested, the said Indiana and Illinois Central Railway Company have resolved to issue and negotiate a series of two thousand seven hundred and fifty bonds for one thousand dollars each, numbered from 1 to 2,750, inclusive, and amounting, in the aggregate, to two millions seven hundred and fifty thousand dollars, to be all equally secured by these presents, and to be of the tenor and substantially in the form following:

United States of America.

No. .] States of Indiana and Illinois. [$1,000.

Indiana and Illinois Central Railway Company.

First mortgage seven per cent. bond, free of government tax.

Know all men by these presents, that the Indiana and Illinois Central Railway Company is indebted to the Union Trust Company of New York in the sum of one thousand dollars, in gold coin of the United States of America, which the said company promises to pay to the said Union Trust Company, or to the bearer hereof, on the first day of April, in the year one thousand nine hundred, in the city of New York, with interest thereon, at the rate of seven per centum per annum, payable in gold coin aforesaid semi-
146 annually, at the city of New York or London, at the holder's option, on the first days of April and of October in each year, upon the presentation and surrender of the coupons hereto attached, as they severally become due, and in case of the non-payment of any half-yearly instalment of interest which shall have become due and been demanded, and such default shall have continued six months after demand, the principal of this bond shall become due in the manner and with the effect provided for in the trust deed securing its payment.

This is one of a series of two thousand seven hundred and fifty bonds, each of one thousand dollars, of like tenor and date, numbered respectively from 1 to 2,750, inclusive, and amounting in the aggregate to two million seven hundred and fifty thousand dollars, the payment of each and all of which is equally secured by a deed of trust or mortgage, bearing date the first day of April, eighteen hundred and seventy, duly executed and delivered by the said company, conveying the railroad of the said company, with its present and future equipments, property, and franchises, in said deed of trust or mortgage mentioned, in which the said Union Trust Company of New York is trustee.

The payment of the semi-annual interest on the said series of bonds until the completion of said railroad is further secured
147 by the assignment and transfer to the said trustee of the proceeds of thirty thousand acres of land in Indiana and Illinois, and also of five hundred thousand dollars of city, county, and township subscriptions and donations in the said states.

This bond is entitled to the benefit of a sinking fund of twenty-five thousand dollars per annum, created by said deed of trust, to be set apart annually for the redemption of said bonds issued under and secured thereby.

This bond shall pass by delivery, or it may be registered by its owner on the books of the company, at the city of New York; after a registration, duly certified hereon, no transfer, except on the books of the company, at the city of New York, shall be valid;

but its transferability by delivery may be restored, at the option of the holder, by a transfer to bearer, registered as aforesaid.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and signed by the Union Trust Company of New York.

In witness whereof the said company has caused its corporate name to be signed and its corporate seal to be affixed, and the same to be attested by the signatures of its president and secretary, and has also caused the coupons hereto attached to be signed by its secretary, this first day of April, in the year eighteen hundred and seventy.

INDIANA AND ILLINOIS CENTRAL
[SEAL.] RAILWAY COMPANY.
By JOHN K. WARREN, *President.*

B. K. DURFEE, *Secretary.*

148 Now, therefore, be it known, that for and in consideration of the premises, and of the sum of one dollar to the parties of the first part duly paid by the parties of the second part, and in order to secure the payment of the principal and interest of the said bonds, according to the tenor thereof, and of the coupons thereto annexed, the said Indiana and Illinois Central Railway Company have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey, unto the parties of the second part, their lawful successors in the trust hereby created and assigns, all and singular the railroad of the parties of the first part, or which the parties of the first part are by law authorized to construct, being the line of railroad known and designated as the "Indiana and Illinois Central Railway," as the same is and hereafter shall be constructed, extending from the city of Indianapolis, in the State of Indiana, to the city of Decatur, in the State of Illinois, a distance of one hundred and fifty-one miles, together with all lands, tenements, and hereditaments acquired or to be acquired for rights of way for the said railroad hereby conveyed, and all the appurtenances thereto belonging; and also all lands acquired and appropriated, or to be acquired or appropriated, for depots, superstructures, buildings, erections, and fixtures on the said line of railway, and all tracks, bridges, viaducts, culverts,
149 fences, and all houses, buildings, and superstructures thereon or appertaining thereto, and all other property, real or personal, now owned or hereafter to be acquired by the party of the first part, their successors or assigns, for the construction, operation, or management of said railroad, including all locomotives, tenders, cars, and other rolling-stock and equipment, machinery, tools, materials, and all and singular the other personal property of every nature, kind, and description whatever, belonging to the said parties of the first part, and also all the franchises, powers, rights, and privileges now owned, possessed, or which may hereafter be by

them acquired for the construction, maintenance, and operation of said railroad: To have and to hold the above-mentioned and described premises, rights, franchises, railroad, real and personal property, unto the said parties of the second part, their successors in this relation and assigns, in trust for the several persons who may hereafter become the owners of any of said bonds, without preference of any of such bonds over any of the others by reason of priority in the time of their issue, subject, however, to the use, possession, management, and enjoyment of said railroad, franchises, and property by the said parties of the first part, and to their right to receive and take the tolls, incomes, revenues, rents, issues, and profits thereof, so long as no default shall be made in payment of either the
150 interest or principal of said bonds, or any part of them, and so long as the parties of the first part shall keep and perform the several covenants and agreements in said bond and in this instrument contained and on their part to be kept and performed, and for the purposes and upon the conditions hereinafter stated.

First. The parties of the first part will pay, or cause to be paid, the bonds herein mentioned, and the interest thereon, according to the terms hereof, and all taxes, levies, and assessments imposed and assessed, or which may hereafter be imposed and assessed upon the premises, franchises, and property hereby conveyed or intended so to be, and also the United States government tax upon the interest payable on said bonds, and each of them, and represented by the coupons annexed to said bonds, and will at their own cost and expense do, or cause to be done, all things necessary to preserve and keep valid and intact the lien or incumbrances hereby created.

Second. In case default shall be made for six months in the payment of any interest upon either of said bonds when the same shall become due and payable, the whole principal sum mentioned in all and each of said bonds shall forthwith become due and payable, and the lien or incumbrance hereby created for the security and payment of such bonds may be at once enforced, any-
151 thing herein to the contrary notwithstanding, and in such case it shall be lawful for the trustees then in office to enter upon all and singular the railroad property and premises hereby conveyed, or intended to be conveyed, and to have, hold, use, and operate the same until the same shall have been sold or otherwise disposed of in pursuance of the power hereinafter mentioned, or by virtue of the decree of some court of competent jurisdiction, and until such time, and from time to time, to make all needful repairs and replacements, and such useful alterations, additions, and improvements to said railroad as may be necessary for the proper working of the same, and to receive the tolls, freights, incomes, rents, issues, and profits thereof, and after deducting the expenses of operating and managing the said railroad and other property, and of the said repairs, replacements, additions, and improvements, as well as just compensation for their own services, and for the ser-

vices of such attorneys and counsel as they may have employed, to apply the moneys accruing as aforesaid to the payment of said bonds pro rata and without discrimination or preference, and thereafter to pay over any surplus to the said parties of the first part, their successors or assigns, or as any court of competent
152 jurisdiction shall order, and to restore the said railroad and other property to the parties of the first part.

Third. In case default shall be made and continue as aforesaid, the parties of the second part or their successors in this trust may, and upon the written request of the holders of at least five hundred of such bonds then outstanding shall, foreclose this mortgage by legal proceedings, or sell or cause to be sold the said railway, franchises, and property, real and personal, hereby conveyed or intended so to be, and all benefit and equity of redemption of the parties of the first part in and to the same, and every part thereof, with the benefit of all the franchises aforesaid, which said last-mentioned sale shall be at public auction, at the city of New York or at the city of Indianapolis, on previous notice of the time and place of such sale by advertisement published not less than three times a week for ten weeks in at least two newspapers of general circulation published in the city of New York, two in the city of Indianapolis, and two in the city of Decatur, and in such other places as may be required by law; and in such case said parties of the second part and their successors in this trust shall make and deliver to the purchasers of the said premises good and sufficient deeds of conveyance for the same in fee simple; and such sale and conveyance shall be a perpetual bar, both in law and in equity, against
153 the parties of the first part, their successors and assigns, and all other persons claiming by, through, or under them, of all right, title, interest, or claim in or to said railroad premises and property, and every part and parcel thereof; in case of such sale the said trustees shall deduct from the proceeds of such sale their just allowances for all the expenses thereof, including attorneys' and counsel's fees, and all expenses which may have been incurred in operating, managing, or maintaining the said railroad, or in managing the business thereof, as well as just compensation for the services of said trustees, and thereafter shall apply so much of the said proceeds as may be necessary to the payment of the principal and interest of the said bonds then remaining unpaid, pro rata, without discrimination or preference, and any surplus remaining after such payment shall be paid over to the said parties of the first part, or as any court of competent jurisdiction shall order.

Fourth. At any sale of the aforesaid property, or any part thereof, made by virtue of these presents or by judicial authority, the trustee or trustees may purchase the property so sold, or any part thereof, on behalf of all the holders of the said bonds then outstanding, at a reasonable price, if but a portion of said property shall be so purchased, or if all of it be purchased, then at a price

not exceeding the whole amount of such bonds then outstanding, with the interest accrued thereon.

154 *Fifth.* And the parties of the first part, in consideration aforesaid, and for the purpose of securing the payment of the interest on said bonds during the construction and until the completion of their said road, covenant and agree with the parties of the second part, their successors or assigns, that all the proceeds of thirty thousand acres of land, situated in the States of Indiana and Illinois, heretofore conveyed by said parties of the first *part*, by deed dated the twenty-seventh day of November, 1869, to John K. Warren, as trustee, to sell said lands and pay the proceeds thereof into the treasury of the parties of the first part, for the purpose of aiding in the construction of said road, shall be appropriated and applied to the payment of the interest of said bonds until the railroad of the parties of the first part shall have been fully completed, and for this purpose said parties of the first part hereby assign, transfer, and set over unto the said parties of the second part, their successors in this trust and assigns, all the proceeds of said thirty thousand acres of land, and of every part thereof, and authorize and empower the said parties of the second part, and their successors in this trust, to receive the said proceeds of said lands from the said John K. Warren, trustee, or his successor in such trust, as fast as the same shall be received by said trustee, and hereby authorize, empower, and direct the said John K.

155 Warren, from time to time, and on the request and demand of the parties of the second part, or their successors in this trust, to render a true and full account of the lands sold, of the particulars of such sale, of the amounts received therefor, and the disposition, if any, made thereof, and to pay over to the said parties of the second hereto, and their successors or assigns, all the proceeds of said lands as fast as the same shall be received and when demanded, which said proceeds of sale shall be received and held by the parties of the second part hereto, or their successors in this trust, upon the trust that the same shall be by them applied to the payment of the interest upon said bonds during the construction and until the completion of the said road, as the same shall from time to time mature, and to no other purpose, and upon the completion of the said railroad, all right, title and interest of the said parties of the second part, or their successors in this trust, in or to the said proceeds of the sales of said lands, or in or to the said lands, shall cease and the same shall be re-assigned to the said parties of the first part, their successors or assigns. A schedule of said lands is hereto annexed and forms a part of this instrument.

Sixth. And the parties of the first part, in consideration aforesaid and for the purpose of securing the payment of the

156 interest on said bonds during the construction and until the completion of their said road, covenant and agree with the said parties of the second part, their successors and assigns, that all

the proceeds of all donations and subscriptions heretofore made under the laws of the States of Indiana and Illinois by cities, counties, and townships, amounting at the date hereof to five hundred and twenty thousand dollars, as appears by the schedule thereof hereto annexed, shall be appropriated and applied to the payment of the interest on said bonds until the said railroad of the parties of the first part shall have been fully completed; and for this purpose said parties of the first part hereby assign, transfer, and set over unto the said parties of the second part, their successors and assigns, all said donations and subscriptions, to be by them enforced and collected, either in the name of the said parties of the first part or otherwise, as and in any manner which may be deemed advisable, and the proceeds thereof shall be by them held upon the trust aforesaid, and the same shall be applied to the payment of the aforesaid interest during the period aforesaid and to no other purpose, and upon the completion of the said railroad the said donations and subscriptions remaining uncollected after the payment of said
157 interest and the proceeds thereof not necessary for such purpose, shall be re-assigned to the parties of the first part.

Seventh. The parties of the first part, in consideration aforesaid, further covenant and agree with the parties of the second part and their successors in this trust that they, the said parties of the first part, their successors or assigns, will, on the first day of January, 1873, and on the first day of January annually thereafter, pay to the parties of the second part, or their successors aforesaid, twenty-five thousand dollars as a sinking fund, which moneys, together with all accumulations of interest thereon, shall be exclusively applied to the purchase and redemption of bonds secured by these presents, and which said purchases may be made, in the discretion of the trustee, either at the New York Stock Exchange, in the city of New York, or at any public sale in said city, or after ten days' public notice in two or more daily papers in the city of New York, and which said purchases shall be made at the lowest possible price, and in no case exceeding the par and interest of said bonds, and the bonds so purchased, with the coupons thereto attached, shall be immediately cancelled by the said parties of the second part or their successors as aforesaid.

Eighth. The trustees hereby created and their successors may, in their discretion, upon the written request of the parties of
158 the first part, or their successors, sell, assign, or transfer any real or personal property owned or held by the said company, and bound by the lien of this conveyance, and release the same from the lien hereby created, whenever, in the judgment of said trustees, said property shall not be necessary for the operation and management of the said railroad, and said trustees may also, in their discretion, on like request, consent to any change in the location of the track of said railroad or of the depots or other buildings and structures of the said parties of the first part as may seem

expedient, and said trustees are authorized to make and deliver all instruments necessary or proper to effect such objects, provided, however, that such property shall not be sold at less than its full value, and in all cases the proceeds of said sales or transfers, and all lands, depots, or other buildings and structures and all personal property acquired or purchased in substitution for any so sold, assigned, or released, shall be subject to the lien of this deed of trust, and shall upon demand be conveyed or transferred to the trustees and on the trusts herein.

And the parties of the first part covenant and agree that whenever they or their successors or assigns shall acquire any lands, equipments, property, or franchise of whatever nature or de-
159 scription for use in connection with said railroad, they will hold the same upon and subject to the trusts of this instrument until conveyance thereof shall be duly made and delivered to the parties of the second part, or their successors, and shall and will, when thereunto requested, execute and deliver all such further deeds, conveyances, transfers, and assurances in the law for the better assuring unto the parties of the second part and their successors, upon the trusts herein expressed, the railroad, equipment, appurtenances, franchises, property, and things hereinbefore mentioned, and to which the said parties of the first part are, or may hereafter become, entitled, or may in any manner acquire for the use of the said railroad, as by the said trustees or by *his* counsel, learned in law, shall be reasonably advised or required.

Ninth. The trustees hereby created, or their successors in this trust, may resign the trusts hereby imposed and be discharged therefrom by giving thirty days' previous notice in writing to the said parties of the first part, and said trustees may likewise be removed by a court of competent jurisdiction, and in case of the death or resignation or removal of any trustee the parties of the first part may, by resolution of their board of directors, thereupon appoint a new trustee, and so from time to time the place of said trus-
160 tee may be filled in like manner, but in case of neglect by the parties of the first part to appoint such new trustee within three months after a vacancy shall have occurred as aforesaid, or in case the trustee so appointed to fill such vacancy shall not be satisfactory to the holders of a majority in amount of said bonds then outstanding, the holders of such majority in amount of such bonds may, by writing under their hands and seals, appoint a new trustee to fill such vacancy, and such appointment so made shall supersede that which may have been made by the parties of the first part, and it is further agreed that in either of said cases all the estate, right, title, interest, power, and control of the existing trustee shall be divested, cease and determine, but without any discontinuance of the trust, and the new trustee so substituted and appointed shall thereby become vested with all the estate, powers and authority granted to or conferred by these presents, without any further assurance or

conveyance, but the parties of the second part, or their successors in this trust, shall immediately execute all such conveyances and and other instruments as may be fit and expedient for the purpose of assuring the legal estate in the premises to the trustee so appointed.

Tenth. The said parties of the second part, and their successors in this trust, may employ, at the expense of the parties of the first
160 part, such attorneys, counsel, clerks, or other agents as they may deem proper in the execution of the trusts hereby created, and shall be entitled to just compensation for all services rendered by them in the execution of this trust, and to be reimbursed for all necessary expenditures in and about the same, to be paid by the parties of the first part, unless herein otherwise provided; provided, however, and it is expressly agreed, that the said parties of the second part, or their successors in this trust, shall be accountable for reasonable care and diligence only in the performance of such trusts, and in the management of the said estate and property, and shall not be liable, accountable, or responsible for the acts of any agent, depository, or substitute employed by them, when such agent, depository, or substitute shall have been selected with reasonable discretion.

Eleventh. Upon payment of the principal and interest of the bonds heretofore mentioned and intended to be secured hereby, these presents and the estate hereby granted shall cease and be void and the parties of the first part shall be immediately and fully re-invested with the premises hereby granted, in law and in fact, without any entry or other act whatever.

In witness whereof the said Indiana and Illinois Central
162 Railway Company have caused this instrument to be signed by the president and attested by the secretary of said corporation, and the corporate seal thereof to be affixed hereto by the authority of the board of directors thereof for that purpose obtained, and the said Union Trust Company of New York have likewise caused this instrument to be signed by the president and secretary of said corporation, and the corporate seal thereof to be affixed hereto by the authority of the board of directors thereof for that purpose had and obtained, and have thereby signified their acceptance of the trusts hereinbefore created.

{ SEAL OF THE COMPANY. } INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY,
By J. K. WARREN, *President.*

Attest: B. K. DURFEE,
Secretary Ind. and Ill. Cent. Railway Co.

{ SEAL OF THE COMPANY. } UNION TRUST COMPANY OF NEW YORK, *Trustee,*
By J. W. FROTHINGHAM, *President.*

C. F. CARLTON, *Secretary.*

STATE OF INDIANA,
COUNTY OF MARION, CITY OF INDIANAPOLIS. } ss.

Be it remembered, that on the nineteenth day of April, in the year one thousand eight hundred and seventy, in the city and county aforesaid, before me, Luther R. Martin, a commissioner resi-
163 ding in said city, duly appointed by the governor of the State of Illinois to take acknowledgment and proof of the execution of deeds and other instruments in writing, under seal or not, to be used and recorded in said state, and to take depositions, etc., personally appeared John K. Warren, president of the Indiana and Illinois Central Railway Company, personally to me known to be such president and to be the identical person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged that the same was executed by him as such president, and attested to by B. K. Durfee, the secretary of said company, grantor therein, and the seal of said company affixed thereto by the said secretary by order of the board of directors of the said company, and as the free act and deed of the said company for the uses and purposes therein mentioned; and at the same time and place personally appeared before me B. K. Durfee, secretary of the said company, personally to me known to be such secretary, and to be the identical person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged that the same was executed by the said John K. Warren, president, and also by him, the said B. K. Durfee, as secretary of the said company, and the seal thereof affixed thereto by him as such secretary by order of the board of directors
164 of said company, and as the free act and deed of said company for the uses and purposes therein mentioned. In witness whereof I hereunto set my hand and affix my official seal as commissioner of the said State of Illinois, at my office in the city of Indianapolis, county and state aforesaid, this the nineteenth day of April, 1870.

[SEAL.] LUTHER R. MARTIN,
Commissioner for the State of Illinois,
in the city of Indianapolis, Indiana.

STATE OF INDIANA,
COUNTY OF MARION, CITY OF INDIANAPOLIS. } ss.

Be it remembered, that on the nineteenth day of April, in the year one thousand eight hundred and seventy, in the city and county aforesaid, before me, James E. Franklin, a notary public, residing in said city and county, duly commissioned and sworn, and authorized to take the acknowledgment and proof of the execution of deeds and other instruments in writing to be used and recorded in said state, personally appeared John K. Warren, president of the Indiana and Illinois Central Railway Company, personally to me known to be

such president, and to be the identical person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged that the same was executed by him as such president, and attested by B. K. Durfee, the secretary of
165 said company, grantor therein, and the seal of said company affixed thereto by the said secretary by order of the board of directors of the said company, and as the free act and deed of said company for the uses and purposes therein mentioned; and at the same time and place personally appeared before me B. K. Durfee, secretary of the said company, personally to me known to be such secretary, and to be the identical person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged that the same was executed by the said John K. Warren, president, and also by him, the said B. K. Durfee, as secretary of said company, and the seal thereof affixed thereto by him, as such secretary, by the order of the board of directors of said company, and as the free act and deed of said company, for the uses and purposes therein mentioned.

[SEAL.] JAMES E. FRANKLIN,
Notary Public in and for Marion County, Indiana.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, that on this 23d day of April, in the year of our Lord one thousand eight hundred and seventy, in the city and county aforesaid, before me, Charles Nettleton, a commissioner residing in said city, duly appointed and commissioned by the governor of the State of Illinois to take the acknowledgment
166 and proof of the execution of deeds and other instruments in writing, under seal or not, to be used or recorded in said State of Illinois, and to take depositions, &c., personally appeared J. H. Frothingham, the president, and C. T. Carlton, the secretary, of the Union Trust Company of New York, to me personally known to be such, and they (J. H. Frothingham and C. T. Carlton) being by me severally duly sworn did each depose and say that he, the said J. H. Frothingham, resided in New York, and that he, said *T. C.* Carlton, resided in New York; that he, said J. H. Frothingham, was the president, and that he, said C. T. Carlton, was the secretary, of the said Union Trust Company of New York; that they know the corporate seal of the said company; that the seal affixed to the foregoing instrument, purporting to be the seal of said company, was such corporate seal; that it was so affixed by the order of the board of directors of said company, and that they severally signed their names thereto by the like order as president and secretary of said company respectively; and they, the said J. H. Frothingham and C. T. Carlton, also severally acknowledged that they had executed the said instrument as the act and deed of the

said Union Trust Company of New York for the uses and purposes therein expressed.

In witness whereof, I hereto set my hand and affix my official seal, as commissioner of the State of Illinois at my office, in the city and county of New York and state aforesaid, this 23d day of April, A. D. 1870.

[SEAL.] CHARLES NETTLETON,
Commissioner of the State of Illinois for the city of New York.

167 STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, that on this 23d day of April, A. D. 1870, before me, Charles Nettleton, a commissioner in and for the State of New York, duly appointed and commissioned by the governor of the State of Indiana, duly sworn and dwelling in the said city of New York, personally appeared J. H. Frothingham, the president, and C. T. Carlton, the secretary, of the Union Trust Company of New York, who are to me personally known to be such, and they, the said J. H. Frothingham and C. T. Carlton, being by me severally duly sworn, do each depose and say, that he, said J. H. Frothingham, resided in New York, and that he, said C. T. Carlton, resided in New York; that he, J. H. Frothingham, was the president, and that he, said C. T. Carlton, was the secretary, of the said Union Trust Company of New York; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was such corporate seal; that it was so affixed by order of the board of directors of said company, and that they severally signed their names thereto by the like order as president and secretary of said company respectively; and they, the said J. H. Frothingham and C. T. Carlton, also severally acknowledged the execution of the said instrument as the act and deed of the said Union Trust Company of New York.

In witness whereof, I have hereunto set my hand and
168 affixed my official seal, the day and year in this certificate above written.

[SEAL.] CHARLES NETTLETON,
Commissioner for Indiana in New York.

Schedule of subscriptions and donations.

Schedule of the subscriptions and donations to the Indiana and Illinois Central Railway Company, referred to in the foregoing deed.

In the State of Illinois.

County.	Township.	How subscribed.	Date of subscription.	Amount.	Total.
Marion	.....	By vote of its citizens.	Oct. 6, 1866	60,000	
Macon.	.....	" "	June 3, 1868	40,000	
					100,000
Piatt	Unity.	" "	Sept. 13, 1869	14,000	
Moultrie.....	Lowe.....	" "	Sept. 13, 1869	12,000	
					26,000
Douglas... ..	.....	" "	July 15, 1869	80,000	
"	Garrett.....	" "	July 3, 1869	13,000	
"	Tuscola.....	" "	July 3, 1869	20,000	
"	Camargo.....	" "	July 3, 1869	15,000	
"	Newman.	" "	July 3, 1869	12,000	
					140,000
Edgar.....	Shiloh.	" "	Aug. 28, 1869	10,000	
"	Young America.	" "	Aug. 28, 1869	12,000	
"	Ross.....	" "	Aug. 28, 1869	12,000	
"	Edgar.....	" "	Aug. 28, 1869	12,000	
"	Bruellet's Creek.	" "	Aug. 28, 1869	8,000	
"	Prairie.....	" "	Aug. 28, 1869	10,000	
					64,000

In the State of Indiana.

Vermillion.	Holt.	By vote of its citizens.	Nov. 6, 1869	.....	25,000
Park	.....	" "	Nov. 13, 1869	.....	100,000
Marion	Centre.....	" "	Mar. 15, 1870	.....	65,000
Total...					$520.000

169 *Schedule of Lands.*

Schedule of the lands referred to in the foregoing deed in the counties of Clay, Elkhart, Jasper, Greene, Newton, Jefferson, Kosciusko, Marion, Morgan, Marshall, Putnam, Owen, Parke, Pulaski, St. Joseph, Steuben, Vermillion, Wells, and White, in the State of Indiana.

In Clay County aforesaid, to wit, the—

E.	½	of the	S. E.	¼	of section	15,	town.	10,	range	7 W.,	80 acres.
S.W.	¼	"	S. E.	¼	"	15,	"	10,	"	7 W.,	40 "
N.	½	"	S. E.	¼	"	11,	"	9,	"	7 W.,	80 "
N.	½	"	S. E.	¼	"	32,	"	11,	"	6 W.,	80 "
S.	½	"	N. E.	¼	"	32,	"	11,	"	6 W.,	80 "
N.E.	¼	"	S.W.	¼	"	32,	"	11,	"	6 W.,	40 "
S.W.	¼	"	S. W.	¼	"	32,	"	11,	"	6 W.,	40 "
S.E.	¼	"	N.W.	¼	"	32,	"	11,	"	6 W.,	40 "

N. E. ¼	of the	N. E. ¼	of	section	34,	town.	11,	range	6 W.,	40 acres.
N.W.¼	"	N. E. ¼	"		32,	"	9,	"	6 W.,	40 "
S. ½	"	S. E. ¼	"		30,	"	9,	"	6 W.,	80 "
E. ½	"	S.W. ¼	"		35,	"	11,	"	7 W.,	80 "
E. ½	"	N.E. ¼	"		28,	"	10,	"	7 W.,	80 "

In the county of Elkhart aforesaid, to wit, the—

S. E. ¼ of the N. E. ¼ of section 35, town. 38, range 7, 40 acres.

In the county of Jasper aforesaid, to wit, the—

N. W. ¼ section 28, of town. 28. range 6, 160 acres.

N. ½	of the	N. E. ¼	of	section	29,	town.	28,	range	6, 80	acres.
W. ½	"	N.W. ¼	"		29,	"	28,	"	6, 80	"
S. E. ¼	"	N.W. ¼	"		29,	"	28,	"	6, 40	"
N. E. ¼	"	N.W. ¼	"		1,	"	31,	"	6, 36.30	"
N.W. ¼	"	N. E. ¼	"		1,	"	31,	"	6, 31.10	"
S. W. ¼	"	S. E. ¼	"		1,	"	31,	"	6, 40	"

170

S. E. ¼	"	N.W. ¼	"		1,	"	31,	"	6, 40	"
N. E. ¼	"	S. W. ¼	"		1,	"	31,	"	6, 40	"
S. W. ¼	"	N. E. ¼	"		1,	"	31,	"	6, 40	"
N.W. ¼	"	S. E. ¼	"		1,	"	31,	"	6, 40	"
N. E. ¼	"	S. E. ¼	"		1,	"	31,	"	6, 40	"
S. E. ¼	"	S. W. ¼	"		1,	"	31,	"	6, 40	"
S. E. ¼	"	S. E. ¼	"		1,	"	31,	"	6, 40	"
S. E. ¼	"	N. E. ¼	"		5,	"	28,	"	5, 40	"
N.W. ¼	"	S. E. ¼	"		5,	"	28,	"	5, 40	"
S. E. ¼	"	S. E. ¼	"		6,	"	28,	"	5, 40	"
N. E. ¼	"	N. E. ¼	"		7,	"	28,	"	5, 40	"
N.W. ¼	"	S. E. ¼	"		18,	"	28,	"	5, 40	"
N.W. ¼	"	N. E. ¼	"		6,	"	29,	"	5, 40	"
N.W. ¼	"	N.W. ¼	"		6,	"	29,	"	5, 40	"
N.W. ¼	"	N. E. ¼	"		25,	"	29,	"	5, 40	"
S. E. ¼	"	S. E. ¼	"		24,	"	29,	"	5, 40	"
N.W. ¼	"	S. W. ¼	"		8,	"	29,	"	5, 40	"
S. ½	"	S. E. ¼	"		7,	"	29,	"	5, 80	"
W. ½	"	N.W. ¼	"		13,	"	29,	"	5, 80	"
S. E. ¼	"	S. W. ¼	"		13,	"	29,	"	5, 40	"
N.W. ¼	"	N.W. ¼	"		19,	"	29,	"	7, 38.79	"
N.W. ¼	"	S. W. ¼	"		3,	"	29,	"	7, 40	"
N.W. ¼	"	S. W. ¼	"		31,	"	29,	"	7, 42.41	"
S.W. ¼	"	S. W. ¼	"		32,	"	29,	"	7, 40	"
N.W. ¼	"	N.W. ¼	"		33,	"	29,	"	7, 40	"
N.W. ¼	"	N. E. ¼	"		19,	"	29,	"	7, 40	"
S. E. ¼	"	N. E. ¼	"		19,	"	29,	"	7, 40	"
N. ½	"	N. W ¼	"		5,	"	29,	"	7, 64.20	"
N.W. ¼	"		"		3,	"	29,	"	7, 137.19	"

W.	¼	of the	S. W.	¼	of section	5,	town. 29,	range	7,	80 acres.
S. E.	¼	"	S. W.	¼	"	5,	" 29,	"	7,	40 "
171										
N. E.	¼	"	S. W.	¼	"	8,	" 29,	"	7,	40 "
N. W.	¼	"				8,	" 29,	"	7,	160 "
N. W.	¼	"	N. W.	¼	"	22,	" 29,	"	6,	40 "
S.	½	"	N. E.	¼	"	12,	" 31,	"	6,	80 "
S.	½	"	N. W.	¼	"	12,	" 31,	"	6,	80 "
N.	½	"	S. E.	¼	"	12,	" 31,	"	6,	80 "
N.	½	"	S. W.	¼	"	12,	" 31,	"	6,	80 "
N. E.	¼	"	S. E.	¼	"	11,	" 31,	"	6,	40 "
S. E.	¼	"	N. E.	¼	"	11,	" 31,	"	6,	40 "
S. W.	¼	"	N. W.	¼	"	7,	" 31,	"	5,	40 "
N. E.	¼	"	N. E.	¼	"	7,	" 31,	"	5,	40 "
W.	½	"	N. W.	¼	"	17,	" 31,	"	5,	80 "
E.	½	"	N. E.	¼	"	18,	" 31,	"	5,	80 "
S. E.	¼	"	N. W.	¼	"	34,	" 31,	"	5,	40 "
N. E.	¼	"	N. E.	¼	"	34,	" 31,	"	5,	40 "
N. W.	¼	"	S. E.	¼	"	11,	" 29,	"	5,	40 "
S. E.	¼	"	S. E.	¼	"	11,	" 29,	"	5,	40 "
W.	½	"	S. W.	¼	"	11,	" 29,	"	5,	80 "
E.	½	"	N. W.	¼	"	15,	" 29,	"	5,	80 "
S. W.	¼	"	N. W.	¼	"	15,	" 29,	"	5,	40 "
W.	½	"	S. W.	¼	"	15,	" 29,	"	5,	80 "
W.	½	"	N. W.	¼	"	25,	" 29,	"	5,	80 "
W.	½	"	S. W.	¼	"	25,	" 29,	"	5,	80 "
E.	½	"	N. E.	¼	"	26,	" 29,	"	5,	80 "
N. W.	¼	"	S. E.	¼	"	27,	" 30,	"	5,	40 "
S.	½	"	S. E.	¼	"	27,	" 30,	"	5,	80 "
N. E.	¼	"			"	34,	" 30,	"	5,	160 "
W.	½	"	N. W	¼	"	35,	" 30,	"	5,	80 "
S. W.	¼	"			"	3,	" 30,	"	6,	160 "
W.	½	"	N. E.	¼	"	28,	" 30,	"	7,	80 "
E.	½	"	S. W.	¼	"	28,	" 30,	"	7,	80 "
172										
S. E.	¼				"	28,	" 30,	"	7,	160 "
N. E.	¼				"	32,	" 30,	"	7,	160 "
S. E.	¼				"	32,	" 30,	"	7,	160 "
S.	½	of the	N. E.	¼	"	28,	" 28,	"	6,	80 "
N. E.	¼	"	N. W.	¼	"	29,	" 28,	"	6,	40 "
E.	½				"	26,	" 30,	"	7,	320 "
N. E.	¼	"	S. E.	¼	"	27,	" 28,	"	6,	40 "
S. E.	¼	"	S. W.	¼	"	27,	" 28,	"	6,	40 "
N.	½	"	N. W.	¼	"	4,	" 29,	"	6,	62.95 "
S.	½	"	S. W.	¼	"	4,	" 29,	"	6,	80 "
N. W.	¼	"	S. W.	¼	"	4,	" 27,	"	6,	40 "

S.	½	of the	N. E.	¼	of section	30,	town.	28,	range	6,	80	acres.
N.	½	"	N.W.	¼	"	19,	"	28,	"	6,	57.66	"
S. E.	¼	"	S. E.	¼	"	19,	"	28,	"	6,	40	"
S.	½	"	S. W.	¼	"	26,	"	28,	"	6,	80	"
N.	½	"	N.W.	¼	"	18,	"	28,	"	6,	55.22	"
S. E.	¼	"	S. E.	¼	"	18,	"	28,	"	6,	40	"
W.	½	"	N. E.	¼	"	32,	"	28,	"	6,	80	"
N. E.	¼	"	N.W.	¼	"	32,	"	28,	"	6,	40	"
S. W.	¼	"	S. W.	¼	"	31,	"	28,	"	6,	29.24	"
N.	½				"	3,	"	30,	"	6,	320	"
N. E.	¼				"	4,	"	30,	"	6,	160	"
N. E.	¼	"	N. E.	¼	"	1,	"	30,	"	6,	40	"
S. E.	¼	"	N. E.	¼	"	1,	"	30,	"	6,	40	"
E.	½	"	S. E.	¼	"	1,	"	30,	"	6,	80	"
E.	½	"	N. E.	¼	"	1,	"	31,	"	6,	80	"
W.	½	"	N.W.	¼	"	1,	"	31,	"	6,	80	"
W.	½	"	S. W	¼	"	1,	"	31,	"	6,	80	"
N. E.	¼	"	S. E.	¼	"	8,	"	31,	"	6,	40	"
N.	½	"	S. E.	¼	"	9,	"	31,	"	6,	80	"
S. W.	¼	"	S. E.	¼	"	7,	"	31,	"	6,	40	"
173												
S. W.	¼	"	N.W.	¼	"	10,	"	31,	"	6,	40	"
N. E.	¼	"	N. E.	¼	"	11,	"	31,	"	6,	40	"
N.W.	¼	"	N.W.	¼	"	12,	"	31,	"	6,	40	"
N.W.	¼	"	N. E.	¼	"	17,	"	31,	"	6,	40	"
N.	½	"	N. E.	¼	"	36,	"	31,	"	6,	80	"
S. E.	¼	"	N. E.	¼	"	36,	"	31,	"	6,	40	"
E.	½	"	S. E.	¼	"	36,	"	31,	"	6,	80	"
S. W.	¼	"	S. E.	¼	"	36,	"	31,	"	6,	40	"
N.	½	"	N.W.	¼	"	14,	"	30,	"	7,	80	"
S.	½	"	S. E.	¼	"	14,	"	30,	"	7,	80	"
E.	½	"	N. E.	¼	"	27,	"	30,	"	7,	80	"
N.	½				"	33,	"	30,	"	7,	320	"
S. W	¼				"	33,	"	30,	"	7,	160	"
W.	½	"	S. E.	¼	"	33,	"	30,	"	7,	80	"
W.	½	"	N.W.	¼	"	34,	"	30,	"	7,	80	"
W.	½	"	N.W.	¼	"	17,	"	28,	"	7,	80	"
S. W.	¼	"	S. E.	¼	"	17,	"	28,	"	6,	40	"
S.	½	"	N. E.	¼	"	20,	"	28,	"	6,	80	"
S. W.	¼	"	N.W.	¼	"	21,	"	28,	"	6,	40	"
S. E.	¼	"	N.W.	¼	"	21,	"	28,	"	6,	40	"
W.	½	"	S. W.	¼	"	21,	"	28,	"	6,	80	"
N.W.	¼				"	22,	"	28,	"	6,	160	"
S. W.	¼	"	N.W.	¼	"	27,	"	28,	"	6,	40	"
N.W.	¼	"	S. W.	¼	"	27,	"	28,	"	6,	40	"
S.	½	"	S. E.	¼	"	27,	"	28,	"	6,	80	"
S. W.	¼	"	S. W.	¼	"	27,	"	28,	"	6,	40	"

N.	½	of the N. E.	¼	of section	6,	town. 31,	range	5,	80 acres.
N.W.	¼			"	6,	" 31,	"	5,	160 "
S. E.	¼			"	14,	" 31,	"	5,	160 "
S.	½	" S. W.	¼	"	21,	" 31,	"	5,	80 "
W.	½	" S. W.	¼	"	21,	" 31,	"	5,	80 "
174									
S.	½	" S. W.	¼	"	22,	" 31,	"	5,	80 "
N.W.	¼	" S. W.	¼	"	23,	" 31,	"	5,	40 "
S.	½	" S. W.	¼	"	23,	" 31,	"	5,	80 "
N.	½	" N. W.	¼	"	26,	" 31,	"	5,	80 "
N. E.	¼	" N. E.	¼	"	27,	" 31,	"	5,	40 "
S.	½	" N. E.	¼	"	27,	" 31,	"	5,	80 "
N.	½	" N. W.	¼	"	27,	" 31,	"	5,	80 "
N. E.	¼	" S. E.	¼	"	27,	" 31,	"	5,	40 "
W.	½	" S. W.	¼	"	27,	" 31,	"	5,	80 "
S. E.	¼			"	33,	" 31,	"	5,	160 "
N. E.	¼			"	29,	" 31,	"	5,	160 "
S. E.	¼	" N. W.	¼	"	29,	" 31,	"	5,	40 "
E.	½	" S. W.	¼	"	29,	" 31,	"	5,	80 "
S.W.	¼	" N. E.	¼	"	8,	" 27,	"	7,	40 "
S. E.	¼	" N. W.	¼	"	9,	" 27,	"	7,	40 "
N.W.	¼			"	8,	" 27,	"	6,	160 "
N.W.	¼	" N. W.	¼	"	13,	" 28,	"	6,	40 "

In the county of Greene aforesaid, to wit, the—

W. ½ of the N. E. ¼ of section 1, town. 8, range 4, 72.58 acres.

In the county of Newton aforesaid, to wit, the—

N. E.	¼	of the N. W.	¼	of section	13,	town. 29,	range	9,	40 acres.
N. W.	¼	" N. E.	¼	"	22,	" 29,	"	9,	40 "
N. E.	¼	" S. E.	¼	"	5,	" 29,	"	9,	40 "
W.	½	" N. W.	¼	"	6,	" 29,	"	9,	} 135.67
N. W.	¼	" S. W.	¼	"	6,	" 19,	"	9,	} acres.
S. W.	¼	" S. E.	¼	"	7,	" 29,	"	9,	40 acres.
S	½			"	8,	" 29,	"	9,	320 "
N. E.	¼	" N. E.	¼	"	8,	" 29,	"	9,	40 "
S. E.	¼	" N. E.	¼	"	8,	" 29,	"	9,	40 "
N. E.	¼	" N. W.	¼	"	8,	" 29,	"	9,	40 "
S. W.	¼	" N. W.	¼	"	8,	" 29,	"	9,	40 "
175									
S.	½	" S. W.	¼	"	15,	" 29,	"	9,	40 "
N. W.	¼	" S. W.	¼	"	15,	" 29,	"	9,	40 "
N. E.	¼	" N. E.	¼	"	14,	" 29,	"	9,	40 "
S. W.	¼	" N. E.	¼	"	14,	" 29,	"	9,	40 "
E.	½	" N. W.	¼	"	14,	" 29,	"	9,	80 "
N. E.	¼	" S. W.	¼	"	14,	" 29,	"	9,	40 "

S. W. ¼	of the	S. W. ¼	of section	19,	town.	29,	range	9,	40	acres.
N.W. ¼	"	S. E. ¼	"	14,	"	28,	"	9,	40	"
S. E ¼	"	S. W. ¼	"	15,	"	28,	"	9,	40	"
S. E. ¼	"	N. E. ¼	"	20,	"	29,	"	9,	40	"
W. ½	"	N. E. ¼	"	25,	"	30,	"	10,	80	"
E. ½	"	N. W. ¼	"	25,	"	30,	"	10,	80	"
N. ½	"	S. E. ¼	"	25,	"	30,	"	10,	80	"
N.W. ¼			"	15,	"	29,	"	9,	160	"
E. ½			"	15,	"	29,	"	9,	320	"
E. ½	"	N. E. ¼	"	10,	"	29,	"	9,	80	"
W. ½	"	N. W. ¼	"	10,	"	29,	"	9,	80	"
N. E. ¼			"	10,	"	29,	"	9,	160	"
S. E. ¼	"	S. E. ¼	"	18,	"	28,	"	9,	40	"
S. E. ¼			"	31,	"	30,	"	9,	160	"
N.W. ¼	"	S. W. ¼	"	32,	"	30,	"	9,	40	"
S. ½	"	S. W. ¼	"	32,	"	30,	"	9,	80	"
S. W. ¼			"	25,	"	30,	"	10,	156.29	"
S. E. ¼			"	15,	"	28,	"	9,	160	"
W. ½	"	N. E. ¼	"	36,	"	29,	"	8,	80	"
N.E. ¼	"	N. W. ¼	"	36,	"	29,	"	8,	40	"
S. E. ¼	"	S. E. ¼	"	26,	"	29,	"	8,	40	"
S. ½	"	N. W. ¼	"	7,	"	29,	"	9,	80	"
S. E. ¼			"	4,	"	29,	"	8,		
N. ½	"	N. E. ¼	"	4,	"	29,	"	8,	285.44	
S. E. ¼	"	N. E. ¼	"	4,	"	29,	"	8,	acres.	

176

N.W. ¼			of section	3,	town.	29,	range	8,	245.38	
W. ½	of the	S. W. ¼	"	3,	"	29,	"	8,	acres.	
W. ½	"	N. E. ¼	"	3,	"	29,	"	8,	81.60	"
S. E. ¼	"	N. E. ¼	"	3,	"	29,	"	8,	40	"
N. E. ¼	"	S. W. ¼	"	1,	"	29,	"	8,	40	"
S.W. ¼	"	S. W. ¼	"	1,	"	29,	"	8,	40	"
N.W. ¼			"	1,	"	29,	"	8,	188.88	"
N. E. ¼	"	N. E. ¼	"	1,	"	29,	"	8,	38.88	"
N. E. ¼	"	S. E. ¼	"	1,	"	29,	"	8,	40	"
N. ½	"	N.W. ¼	"	7,	"	29,	"	9,	80	"
N.W. ¼	"	N.W. ¼	"	8,	"	29,	"	9,	40	"
N.W. ¼			"	19,	"	29,	"	9,	160	"
All of			"	11,	"	29,	"	9,	640	"
W. ½	of the	N. E. ¼	"	20,	"	28,	"	8,	80	"
S. E. ¼	"	S. E. ¼	"	21,	"	28,	"	8,	40	"
W. ½	"	S. E. ¼	"	21,	"	28,	"	8,	80	"
S. E. ¼	"	N.W. ¼	"	21,	"	28,	"	8,	40	"
E. ½	"	S. W. ¼	"	21,	"	28,	"	8,	80	"
S. E. ¼	"	S. E. ¼	"	10,	"	27,	"	8,	40	"
S. E. ¼	"	S. W ¼	"	10,	"	27,	"	8,	40	"

In the county of Jefferson, aforesaid, to wit: In lot 3 of Sheets' and Wharton's addition to the city of Madison, fronting 52 feet on Walnut Street, and running back 168 feet.

In the county of Kosciusko, aforesaid, to wit:

S. ½ of the N. E. ¼ of section 26, town. 33, range 4 E., 80 acres.
20 acres off end S. E. ¼ " 36, " 33, " 4 " 20 "

In the county of Marion, aforesaid, to wit: Lots numbered 19, 20, 27, 28, 33, 34, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 56, 57, 58, 59, 60, 61, 62, 63, 6, 74, 75, 76, 77, 82, 83, 84, 85,
177 86, in Drake's subdivision of out lot 14 W., White River.
Also, the undivided one-half of north part of out lot 137, containing 3.54 acres.

In the county of Morgan, aforesaid, to wit:

S. E. ¼ of the S. W. ¼ of section 27, town. 11, range 1 E., 40 acres.
E. ½ " " 32, " 11, " 1 " 320 "
N. E. ¼ " S. E. ¼ " 20, " 11, " 1 " 40 "
E. ½ " N.W. ¼ " 21, " 11, " 1 " 80 "
S. ½ " 21, " 11, " 1 " 320 "
W. ½ " N.W. ¼ " 22, " 11, " 1 " 80 "
E. ½ " N.W. ¼ " 28, " 11, " 1 " 80 "
W. ½ " S. E. ¼ " 28, " 11, " 1 " 80 "
N. E. ¼ " S. W. ¼ " 28, " 11, " 1 " 40 "
W. ½ " S. W. ¼ " 28, " 11, " 1 " 80 "
E. ½ " S. E. ¼ " 29, " 11, " 1 " 80 "
S.W. ¼ " S. E. ¼ " 29, " 11, " 1 " 40 "

In the county of Marshall, aforesaid, to wit:

N.W. ¼ of the N. E. ¼ of section 36, town. 35, range 2 E., 40 acres.
S. W. ¼ " N. E. ¼ " 36, " 35, " 2 " 40 "
W. ½ " S. W. ¼ " 5, " 34, " 3 " 80 "

In the county of Putnam, aforesaid, to wit:

S. W. ¼ of the S.W. ¼ of section 1, town. 12, range 5, 40 acres.
Lot No. 5, in section 1, town. 12, range 5, 27.40 acres.

In the county of Owen, aforesaid, to wit, the—

S. E. ¼ of the N. E. ¼ of section 18, town 9, range 4 W., 40 acres.
W. ½ " S.W. ¼ " 20, " 9, " 3 " 80 "
W. ½ " N. E. ¼ " 30, " 9, " 3 " 80 "
S. E. ¼ " S.W. ¼ " 20, " 9, " 3 " 40 "
S. E. ¼ " N. E. ¼ " 30, " 9, " 3 " 40 "
N. E. ¼ " S. E. ¼ " 18, " 9, " 4 " 40 "
S.W. ¼ " S. E. ¼ " 18, " 9, " 4 " 40 "

178

S. E. ¼ " 32, " 9, " 5 " 160 "
S.W. ¼ of the N. W. ¼ " 29, " 9, " 3 " 40 "

In the county of Parke aforesaid, to wit, the—

S. W. ¼	of the	S. E. ¼	of section	3,	town.	15,	range	6	W.,	101 acres.
N. E. ¼	"	S. E. ¼	"	3,	"	15,	"	6	"	
Pt. of S. E. ¼	"	S. E. ¼	"	3,	"	15,	"	6	"	
W. ½	of the	N. E. ¼	"	10,	"	11,	"	7	"	80 "
N. W. ¼	"	N. E. ¼	"	19,	"	17,	"	4	"	40 "
S. E. ¼	"	S. E. ¼	"	17,	"	15,	"	8	"	40 "
E. ½	"	S. W. ¼	"	26,	"	17,	"	8	"	80 "
S. W. ¼	"	S. W. ¼	"	26,	"	17,	"	8	"	40 "
N. W. ¼	"	S. W. ¼	"	35,	"	17,	"	8	"	40 "
S. E. ¼	"	S. E. ¼	"	34,	"	17,	"	8	"	40 "
S. E. ¼	"	S. E. ¼	"	35,	"	17,	"	8	"	40 "
E. ½	"	S. E. ¼	"	4,	"	16,	"	8	"	80 "
W. ½	"	N. E. ¼	"	4,	"	16,	"	8	"	80 "
W. ½	"	S. E. ¼	"	4,	"	16,	"	8	"	80 "
Pt. of W. ½	"	S. W. ¼	"	3,	"	16,	"	8	"	70 "
Part of S. W. corner			"	36,	"	16,	"	9	"	30.58 "
" W. ½	of the	S. W. ¼	"	36,	"	16,	"	9	"	

In the county of Pulaski aforesaid, to wit, the—

E. ½	of section	30,	town.	30,	range	4	W.,	320	acres.	
N. W. ¼	of	"	30,	"	30,	"	4	"	167.77	"
S. E. ¼		"	18,	"	30,	"	4	"	160	"
S. ½	of the	N. E. ¼	of section	18,	town.	30,	range	4	W.,	80 acres.
N. W. ¼	"	N. E. ¼	"	18,	"	30,	"	4	"	40 "
N. E. ¼	"	N. W. ¼	"	18,	"	30,	"	4	"	40 "
N. W. ¼	"	S. W. ¼	"	15,	"	29,	"	4	"	40 "
N. E. ¼	"	N. W. ¼	"	18,	"	29,	"	4	"	40 "
S. W. ¼	"	S. W. ¼	"	18,	"	29,	"	4	"	40 "
N. E. ¼	"	S. W. ¼	"	19,	"	29,	"	4	"	40 "

179

W. ½	"	S. E. ¼	"	28,	"	29,	"	4	"	80 "
S. ½	"	S. W. ¼	"	23,	"	29,	"	4	"	80 "
S. W. ¼	"	S. E. ¼	"	8,	"	29,	"	1	"	40 "
S. E. ¼	"	N. E. ¼	"	9,	"	29,	"	1	"	40 "
S. ½	"	S. E. ¼	"	9,	"	29,	"	1	"	60 "
except 20 acres off the west end.										
S. E. ¼	of the	S. W. ¼	of section	17,	town.	29,	range	1	W.,	40 acres.
N. ½	"	N. E. ¼	"	20,	"	29,	"	1	"	80 "
N. W. ¼	"	N. W. ¼	"	20,	"	29,	"	1	"	40 "
N. ½			"	1,	"	29,	"	2,	"	320 "
S. W. ¼			"	1,	"	29,	"	2,	"	160 "
N. E. ¼			"	12,	"	29,	"	2,	"	160 "
E. ½	"	N. W. ¼	"	12,	"	29,	"	2,	"	80 "
N. W. ¼	"	N. W. ¼	"	12,	"	29,	"	2,	"	40 "
S. W. ¼	"	S. W. ¼	"	13,	"	29,	"	2,	"	40 "
N. W. ¼	"	S. W. ¼	"	24,	"	29,	"	4,	"	40 "

In the county of St. Joseph aforesaid, to wit, the—

N. E. ¼	of	S. W. ¼	of	section	3,	town.	37,	range	1 E.,	40 acres.
N. ½	"	N. E. ¼	"		12,	"	35,	"	3 "	80 "
S. E. ¼			"		1,	"	35,	"	3 "	160 "
E. ½	"	S. W. ¼	"		1,	"	35,	"	3 "	80 "
S. ½	"	N. E. ¼	"		1,	"	35,	"	3 "	80 "
S. E. ¼	"	N. W. ¼	"		1,	"	35,	"	3 "	40 "
N. E. ¼	"	S. E. ¼	"		25,	"	37,	"	1 "	40 "
S. ½	"	S. W. ¼	"		6,	"	35,	"	4 "	80 "
N. W. ¼	"	S. W. ¼	"		6,	"	35,	"	4 "	40 "
S. W. ¼	"	S. E. ¼	"		6,	"	35,	"	4 "	40 "
S. W. ¼	"	N. W. ¼	"		6,	"	35,	"	4 "	40 "

In the county of Steuben aforesaid, to wit, the—

N. E. ¼ of the N. W. ¼ of section 36, town. 38, range 12, 40 acres.

180 In the county of Vermillion aforesaid, to wit, the—

S. W. ¼	of the	S. E. ¼	of	section	15,	town.	16,	range	9 W.,	40 acres.
E. ½	"	S. E. ¼	"		15,	"	16,	"	9 "	80 "
W. fr. ½	"	S. W. ¼	"		14,	"	16,	"	9 "	71 "
S. W. ¼	"	S. E. fr. ¼	"		9,	"	16,	"	10 "	40 "
S. E. ¼	"	N. E. ¼	"		15,	"	16,	"	9 "	40 "
N. W. ¼	"	N. W. ¼	"		9,	"	16,	"	10 "	40 "
S. E. ¼	"	S. E. ¼	"		27,	"	16,	"	10 "	40 "
N. E. ¼	"	S. E. ¼	"		27,	"	16,	"	10 "	40 "
S. E. ¼	"	S. E. ¼	"		5,	"	15,	"	9 "	40 "
pt. W. ½	"	N. E. ¼	"		28,	"	16,	"	9 "	59.1 "
Part			"		21,	"	16,	"	9 "	9 "
N. W. pt. of E. ½		S. E. ¼	"		28,	"	16,	"	9 "	35.50 "

In the county of Wells aforesaid, to wit:

Lot 2 of section 33, town. 28, range 11 E., 56.17 acres.

In the county of White aforesaid, to wit:

N. ½			of	section	9,	town.	28,	range	4 W.,	320 acres.
N. W. ¼	of the	N. W. ¼	"		34,	"	28,	"	6 "	40 "
N. W. ¼	"	N. W. ¼	"		35,	"	28,	"	6 "	40 "
N. W. ¼	"	S. W. ¼	"		35,	"	28,	"	6 "	40 "
N. W. ¼	"	N. E. ¼	"		3,	"	27,	"	6 "	40 "
E. ½	"	N. W. ¼	"		3,	"	27,	"	6 "	73.94 "
N. W. ¼			"		36,	"	28,	"	6 "	160 "
S. W. ¼	"	N. E. ¼	"		12,	"	27,	"	6 "	40 "
W. ½	"	S. E. ¼	"		10,	"	27,	"	6 "	80 "

Situated in the county of Ottawa and State of Michigan, to wit: The E. ½ of the N. W. ¼ of section 12, town. 6, range 16 W., 80 acres.

181 Description of lands, referred to in the foregoing deed, situated in the counties of Christian, Douglas, Edgar, Iroquois, Macon, Moultrie, Piatt, and Vermillion, in the State of Illinois, to wit:

In the county of Christian aforesaid, as follows:

The W. ½ of the S. W. ¼ of section 29, in town. 12 N., range 3 W., 80 acres.

In said county of Douglas, as follows:

S. W. ¼	of the	N. E. ¼	of section	13,	town.	15,	range	9	E.,	40	acres.
S. ½	"	S. E. ¼	"	19,	"	16,	"	11	"	80	"
N. W. ¼	"		"	30,	"	16,	"	11	"	96.20	"
S. W. ¼	"	S.W. ¼	"	17,	"	15,	"	9	"	40	"
W. ½	"	S. E. ¼	"	33,	"	16,	"	14	"	80	"
E. ½	"	S.W. ¼	"	33,	"	16,	"	14	"	80	"
W. ½	"	N.W ¼	"	15,	"	16,	"	9	"	80	"
S. W. ¼	"	S.W. ¼	"	1,	"	15,	"	9	"	40	"
W. ½	"	N. E. ¼	"	11,	"	15,	"	9	"	80	"
S. W. ¼	"	N.W. ¼	"	17,	"	15,	"	9	"	40	"
N. W. ¼	"	S.W. ¼	"	17,	"	15,	"	15	"	40	"
N. ½	"	S. E. ¼	"	32,	"	16,	"	14	"	80	"
N. ½	"	N.W. ¼	"	32,	"	15,	"	14	"	80	"
N. ½	"	N.W. ¼	"	32,	"	16,	"	14	"	80	"
N. E. ¼	"	N. E. ¼	"	33,	"	16,	"	14	"	40	"
E. ½	"	N.W. ¼	"	33,	"	16,	"	14	"	80	"
W. ½	"	N. E. ¼	"	33,	"	16,	"	14	"	80	"
E. ½	"	S. E. ¼	"	4,	"	15,	"	14	"	80	"
S. E. ¼			"	15,	"	16,	"	10	"	160	"
W. ½ of E. ½	"	N.W. ¼	"	34,	"	15,	"	7	"	40	"
W. ½ of N. E. ¼	"	S. E. ¼	"	11,	"	15,	"	9	"	20	"
Lots 1 & 2 in		N. E. ¼	"	5,	"	15,	"	10	"	160	"
Pt. of S. W. ¼	of	S. E. ¼	"	20,	"	15,	"	10	"	30	"
N. E. ¼	of the	N. E. ¼	"	9,	"	15,	"	14,	"	40	"

182 In said county of Edgar aforesaid, as follows:

N. E. ¼	of the	N. E. ¼	of section	25,	town.	16,	range	14,		40	acres.
E. ½	"	S. E. ¼	"	25,	"	16,	"	11,		80	"
E. ½	"	N. E. ¼	"	36,	"	16,	"	11,		30	"
½ lot 1 in		N.W. ¼	"	2,	"	15,	"	14,		41.20	"
½ lot 2 in		N.W ¼	"	2,	"	15,	"	14,		41.29	"
½ lot 1 in		N. E. ¼	"	2,	"	15,	"	14,		39.61	"
½ E. lot 2,		N. E. ¼	"	2,	"	15,	"	14,		19.80	"
½ W. lot 2,		N. E. ¼	"	2,	"	15,	"	14,		19.80	"
Lot 1 in the		N.W ¼	"	3,	"	15,	"	14,		80	"
N.W. ¼	of the	S. W. ¼	"	3,	"	15,	"	14,		40	"
S. W. ¼	"	S. W. ¼	"	3,	"	15,	"	14,		40	"
N.W. ¼	"	N.W. ¼	"	10,	"	15,	"	14,		40	"

W.	½	of the	N. E.	¼	of section	24,	town.	16,	range	13,	80 acres.
W.	½	"	S. E.	¼	"	24,	"	16,	"	13,	80 "
N. W		"	N. E.	¼	"	25,	"	16,	"	13,	40 "
W.	½	"	N. W.	¼	"	11,	"	15,	"	13,	80 "
N.W.	¼	"	S. W.	¼	"	11,	"	15,	"	13,	40 "
S. E.	¼	"	S. E.	¼	"	4,	"	15,	"	13,	40 "
E.	½ lot 2 in		N. E.	¼	"	4,	"	15,	"	13,	40 "
S. E.	¼ of the		N. W.	¼	"	13,	"	16,	"	14,	40 "
N. E.	¼				"	13,	"	16,	"	14,	160 "
N.W.	¼				"	30,	"	16,	"	13,	162.60
N.	½	"	S.	½	"	24,	"	16,	"	14,	160 "
S. E.	¼	"	S. E.	¼	"	24,	"	16,	"	14,	40 "

In the said county of Iroquois, as follows:

Section 31, in town. 24, range 12, 560 acres.
" 32, " 24, " 12, 640 "

In the said county of Macon, as follows:

The E. ½ of the S. E. ¼ of section 29, town. 16, range 4 E., 183 80 acres; also commencing 88 links E. of N. W. corner of the N. E. ¼ section 14, town. 16, range 2 E.; thence E. 12.85 chains, S. 417 chains, W. 1,361 chains, to east line of railroad; thence along said line to beginning.

In the said county of Moultrie, as follows:

Lot 4 in the N. E. ¼ of section 3, town. 15, range 6 E., 109 acres; W. ½ lots 3 and 4 in N. W. ¼ of section 3, town. 15, range 6 E., 95 acres.

In said county of Piatt, as follows:

S.	½				of section	16,	town.	16,	range	6 E.,	320 acres.
S.	½	of the	N.W.	¼	"	16,	"	16,	"	6 E.,	80 "
S.	½	"	N. E.	¼	"	16,	"	16,	"	6 E.,	80 "
N.E.	¼				"	21,	"	16,	"	6 E.,	160 "
W.	½				"	25,	"	16,	"	5 E.,	320 "
S.W.	¼				"	15,	"	16,	"	6 E.,	160 "
S.	½	"	N.W.	¼	"	15,	"	16,	"	6 E.,	180 "
N.	½	"	S. W.	¼	"	14,	"	16,	"	5 E.,	80 "
N. E.	¼				"	23,	"	16,	"	5 E.,	160 "

In the county of Vermillion aforesaid, as follows: the S. E. ¼ of section 29, town. 18, range 12 W., 160 acres.

Also the following described lots, situated in Will County, State of Illinois, to wit: commencing 276 feet from the N. E. corner of lot 1, block 10, West Joliet, running southerly on Bluff street 23 feet; thence westerly to the west line of said lot; thence northerly 23 feet; thence easterly to beginning.

Also the following described land and lots, situated in the counties of Lee and Appanoose, in the State of Iowa, to wit:

In the said county of Lee, as follows: lots numbered 575, 56 761, 951, 952, 953, 954, 955, 956, 957, 947, 948, 949, 950, 570, in Fort Madison.

184 In said county of Appanoose, as follows: the N. W. fr. ¼ of section 6, town. 10, range 18 W., 147.05 acres.

Also the following, situated in the county of Edgar and State of Illinois, to wit, the—

S. W.	¼	of the	S. E.	¼	of section	6,	town.	16,	range	10 W., 40 acres.
W.	½	"	N. E.	¼	"	7,	"	16,	"	10 W., 80 "
N.	½	"	N. W.	¼	"	7,	"	16,	"	10 W., 80 "
E.	½	"	S. E.	¼	"	1,	"	16,	"	11 W., 80 "
N. E.	¼	"	N. E.	¼	"	12,	"	16,	"	11 W., 40 "

INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY,
By J. K. WARREN, *President.*

The said deed of trust is endorsed as follows:

Received for record April 30th, 1870, at 10 o'clock A. M., and recorded in Mortgage Record No. 14, page 382 *et sequitur.*

WM. J. ELLIOTT,
Recorder Marion Co.

And afterwards, to wit, at the November term of said court, on the 21st day of November, A. D. 1876, before the Honorable Walter Q. Gresham, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, the Indiana and Illinois Central Railway Company, by its ————, solicitor, and files its exceptions to the report of the master herein, in the words following, to wit:

185 *Exceptions.*

To the Honorable Judges of said Court.

Exceptions taken by the above-named defendant to the special report herein of John D. Howland, master in chancery of this court, upon the claim of Mrs. Henrietta P. Sprague, the matter of the proof and allowance of which claim, among others, was referred to said master by decree of this court made and entered on the — day of October, A. D. 18—, and which said special report bears date October 21st, A. D. 1876, and was filed in this court on the 23rd day of October, A. D. 1876.

First Exception. For that said master in his said report states that "there is nothing in the evidence that affects the title of Mrs. Sprague to the Madison and Portage bonds;" whereas said master should have found from the evidence, that at the time of the exchange of Madison and Portage bonds for the bonds of the Indiana and Illinois Central Railway Company, Mrs. Sprague knew that the officers of the Madison and Portage road claimed that Con-

dict had disposed of the Madison and Portage bonds without right in payment of his individual liabilities, and that anticipation of trouble concerning the Madison and Portage bonds was one of the influences which induced Mrs. Sprague to make the ex-
186 change, (which is shown by the testimony of John M. Whiting on pages 117, 118, 119, 122, 123, 125, 131 132, of the package of evidence marked "A," filed with said master's report).

Second Exception. For that said master in his said report states "that the motive by which he (meaning Condict) professed to be influenced offering to exchange for them (meaning the Madison and Portage bonds) the bonds of the Indiana and Illinois Central was that they were the better investment;" whereas said master, as this defendant is advised, should have found from the evidence that the true motive by which Condict was influenced in offering to make, and in making such exchange, was the necessity which he believed existed for his obtaining the possession of the Madison and Portage bonds from Mrs. Sprague, in order to meet the demands of said company, then claiming and insisting that said bonds had never been owned by Condict, and that said bonds had been placed in his hands to be sold for the company, and that he had applied them to his own private use, (which is shown by the package of evidence marked "A," filed with said master's report, and more particularly by the testimony of John M. Whiting, on pages 128, 124, and 125 of said package marked "A").

187 *Third Exception.* For that said master in his said report states "that Mrs. Sprague advised carefully with her counsel and business friends, apparently confining her inquiries to the question of value;" whereas said master, as this defendant is advised, ought also to have reported that Mrs. Sprague, through her counsel, had notice of the claim of the officers of the Madison and Portage road, of Condict's misappropriation of the bonds of that company, and that this should have induced the strictest inquiry on her part of the title of Condict to the Indiana and Illinois Central Railway bonds before making the exchange.

Fourth Exception. For that said master in his said report states "that the 75 bonds in question remained in the hands of Condict as chief executive;" whereas said master ought, as this defendant is advised, also have found from the evidence that Condict held said bonds as a member of the executive committee and as the chief executive then acting, and that they were in his hands for safe keeping, and there was no direction or instruction to him from the board of directors of the I. and I. C. R. W. Co., or the executive committee, to sell them or to use them in any way, and that the board of directors had not delegated to the executive committee or given to Condict any authority to dispose of said bonds (as is
188 shown by the package of evidence marked "A," filed with said master's report, and more particularly by the testimony

of John E. Risley, on pages 70, 71, 72, and 73 of said package marked "A").

Fifth Exception. For that said master in his said report has in substance reported that previous to the 3rd day of May, 1871, a by-law of the defendant in force, "conferred on the executive committee all the powers of the board of directors, to be exercised by the committee only when the board should not be in session;" whereas said master should have stated that said by-laws only conferred on the executive committee the power to exercise by a majority of its members the powers of the board of directors when not in session (as is shown by the testimony of Mr. Hammond, on page 62 of the package of evidence marked "A," filed with said master's report). And ought further to have reported that said by-law was repealed by said board of directors on the 3rd day of May, 1871, and that the by-law in force at the time that Condict disposed of the bonds in question was as follows:

"The executive committee shall have and may exercise by a majority of all its members all the powers and authority which from time to time may be delegated to it by the board of directors; a record of all proceedings shall be kept in a book pro-
189 vided for that purpose by the secretary, and certified by him, which shall be read at the next ensuing meeting of the board of directors; the secretary of the company shall call meetings of this committee on the request of any one of its members" (as is shown by the testimony of John E. Risley, on page 65 of the package of evidence marked "A," filed with said master's report).

Sixth Exception. For that said master in his said report has, in substance, stated that "the courts have abundantly elaborated the doctrine of the negotiability of such paper (meaning railroad bonds), and in illustrating and enforcing it have used language quite broad and emphatic. The qualities of commercial paper have been ascribed to it without limitation," and has further stated as a conclusion of law in reference thereto, as follows: "But it is to be noticed that these declarations, as to its characteristics, are general, and have no special authority beyond the point to which they are directed. The importance of including this sort of paper, where, by the habits and necessities of mankind, it belongs in the great volume of commercial securities upon which the business of the world is floated." The courts were, when so speaking, declaring the way for the circulation of such paper upon rather than
190 defining the limitations under which it should travel."

Whereas, as this defendant is advised, such conclusion of said master is erroneous, and that railroad bonds, such as are in question, have all the qualities and incidents of commercial paper, and that the rights of the purchaser or holder of a coupon bond are determined by the same principles which govern those of the purchaser of or holder of a negotiable bill or note, and are governed

by the same rules, as respects the title and rights of the holder, as negotiable bills of exchange and promissory notes.

Seventh Exception. For that said master in his said report has, in substance, stated that the settled rule of law, viz.: "that one is not a bona-fide holder of such paper (meaning commercial paper) who buys it overdue," does not apply to railroad bonds, and cannot be applied to the claimant, Mrs. Sprague, who purchased the 75 bonds in question of Condict on the 24th day of June, 1871, and that such overdue and unpaid coupons were notice to Mrs. Sprague of such dishonor, and subjected them to the same defence in her hands as could have been made to them in the hands of Condict had he attempted to enforce their payment, and that as the defendant
191 had received nothing from Condict for said bonds, the claimant could not enforce their payment as against the defendant.

Eighth Exception. For that the said master in his said report has stated in substance, as one of the reasons why the rule of law, "that the purchaser of negotiable paper, who purchases it after maturity, acquires nothing but the right and title of the transferer or seller," ought not to be applied to the purchaser of railroad bonds with overdue and unpaid coupons attached; that "immense values are involved in this class of securities, they are affected in many instances by peculiar circumstances (which are open and notorious), but in no wise indicate the existence of defects of title;" to hold that overdue and unpaid coupons have this effect is at once to destroy the negotiable qualities of every like security in like condition; whereas, as this defendant is advised, if the principle of law contended for is applicable to securities where the values involved are small, it is equally applicable to securities however great the value, whether railroad bonds, municipal bonds, or securities issued by the government, and any negotiable paper might be affected by circumstances which prevent the payment of interest, and
192 yet not indicate the existence of defects of title.

Ninth Exception. For that said master in his said report states that "the company (meaning the defendant) had trusted Condict implicitly; it had given him plenary powers; he was acting president; as one of the executive committee he was lawfully in possession of these bonds, and was fortified in his claim of title by the assurance of Mr. Seaman, another of the executive committee;" whereas, as this defendant is advised, there is nothing in the evidence to show that the defendant had reposed any special trust in Condict; that it was Lazare, a member of the executive committee, who permitted Condict to have the bonds for safe keeping; that Condict, as vice-president, had no power to sell the bonds, and as a member of the executive committee he had no power to dispose of them, (which is shown by the package of evidence marked A, filed with said master's report, and more particularly by the testimony of John E. Risley, on pages 70, 71, 72, and 73 of said pack-

*with laws overdue and unpaid coupons attached to each bond
wherefore said Master should have applied the rule

age marked A.) And said master ought to have found that the statement of Mr. Seaman that Condict owned the bonds did not in any way give Condict title or give him authority, which only could be given by the committee as a body or by the board of directors.

193 *Tenth Exception.* For that said master in his report states "that Mrs. Sprague and her counsel must be held to have made full inquiry;" whereas said master ought to have found that under the law as applied to the facts proven, Mrs. Sprague and her counsel must be held to have known and been bound by all the equities existing between Condict and the defendant at the time she purchased the bonds in question.

Eleventh Exception. For that said master in his said report has stated, in substance, "that the claimant in making purchase of the bonds of the I. and I. C. R. W. Co. was dealing with a person authorized to make sale of said bonds for defendant, and that she bought the bonds in good faith;" whereas said master should have found (if the evidence convinced him that the claimant was dealing with the defendant by its agent) that the claimant in delivering to Condict securities, the title to which she knew to be one disputed, and when she knew that Condict by accepting them and delivering to her the bonds in dispute was paying his individual debts with the property of the defendant, acted in bad faith, and was not a purchaser in good faith.

Twelfth Exception. For that said master in his said report
194 ought to have found that the defendant did not purchase the bonds of the defendant, and that she did not purchase them of Condict as agent of defendant (which is shown by the package of evidence marked "A," and particularly the testimony of John *N.* Whiting, on pages 129 and 130 of said package), but that at the time of the exchange, Condict claimed to be the owner of the bonds in question, and the fact that he was the vice-president of the company and a member of the executive committee, did not influence her or induce her to make the exchange of bonds.

Thirteenth Exception. For that said master in his report has allowed said claim; whereas said master ought not to have allowed said claim, and in the allowance of the same has stated a conclusion contrary to the law governing the case, and also a conclusion not supported by the evidence.

Wherefore, said defendant does except to said special report of said master, and appeals therefrom to the judgment of this court.

THOMAS H. MACOUGHTRY,
Sol. for Defendant.

And afterwards, to wit, at the May term of said court, on the 24th day of June, A. D. 1878, before the Honorable Walter Q. Gresham, judge of said court, the following further proceedings were
195 had in the above-entitled cause, to wit:

In the matter of the proof and allowance of the bonds filed under the decree of foreclosure in the above cause by Henrietta P. Sprague.

Come now the parties, and also said Henrietta P. Sprague, by their respective solicitors, and the court being sufficiently advised touching the exceptions to the master's report, upon the intervening petition of said Henrietta P. Sprague, it is ordered and adjudged that the said exceptions and each thereof be overruled; it is, therefore, ordered, adjudged, and decreed that the said seventy-five bonds of said Henrietta P. Sprague, numbered from 629 to 703, both inclusive, and the said coupons thereto annexed, be, and the same are hereby, allowed as valid and as covered equally with other ontstanding bonds secured by said mortgage foreclosed by said final decree heretofore entered in said cause, and that said bonds be paid their pro rata shares out of the proceeds of said foreclosure.

And thereupon said defendant, the Indiana and Illinois Central Railway Company, prays an appeal from the above order and decree to the Supreme Court of the United States, which is granted in open court, on condition that said defendant file its appeal
196 bond within ninety days from this date to answer all damages, and the costs and accruing costs in this behalf that may be adjudged against it, in the penal sum of five hundred dollars, payable to the said Henrietta P. Sprague; and thereupon said defendant files its bond, with John R. Elder as security, which security is approved by the court.

And afterwards, to wit, at the May term of said court, on the 1st day of July, A. D. 1878, in recess of said court, the following further proceedings in the above-entitled cause were had, to wit:

In the matter of the proof and allowance of the bonds claimed and filed under the decree of foreclosure in this cause by Henrietta P. Sprague, and appeal from order allowing the same.

Comes now the Indiana and Illinois Central Railway Company, by its proper solicitors, and files its appeal bond, with John R. Elder as security, conditioned upon the prosecution of its appeal to effect, and answering unto all damages and costs if it shall fail to make good its plea, which bond is in the words and figures following, to wit:

In the matter of the proof and allowance of the bonds
197 claimed and filed under the decree of foreclosure in this cause, by Henrietta P. Sprague, and the order and decree of the court overruling the exceptions filed by the Indiana and Illinois Central Railway Company, to the master's report allowing said bonds so claimed by Henrietta P. Sprague, and the order and decree of the court allowing and holding said bonds valid, and ordering the payment of the same.

Know all men by these presents, that we, the Indiana and Illinois Central Railway Company and John R. Elder, are held and firmly bound unto the above-named Henrietta P. Sprague, in the sum of five (5) hundred dollars, to be paid to the said Henrietta P. Sprague, to which payment to be well and truly made, we bind ourselves jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this first day of July, 1878.

Whereas the above-named Indiana and Illinois Central Railway Company has prosecuted its appeal to the Supreme Court of the United States to reverse the order and decree rendered in the above-entitled suit by the Circuit Court of the United States for the District of Indiana in reference to the matter of the proof and allowance of the bonds claimed and filed under the decree of foreclosure in this cause by Henrietta P. Sprague,
198 and the order and decree of the court overruling the exceptions filed by the Indiana and Illinois Central Railway Company to the master's report allowing said bonds as claimed by Henrietta P. Sprague, and the order and decree of the court holding said bonds valid and ordering the payment of the same:

Now, therefore, the condition of this obligation is—if the above named Indiana and Central Railway Company shall prosecute its said appeal to effect and answer all costs and damages that may be awarded against it if it shall fail to make good its plea, thence this obligation to be void, otherwise in full force.

{ SEAL OF CORPORATION. } INDIANA AND ILLINOIS CENTRAL RAILWAY CO.,
Per H. B. HAMMOND, *Pt.*
JOHN R. ELDER, [SEAL.]

Approved July 1st, 1878.

W. P. FISHBACK, *Clerk.*

And this court approved and confirmed the same this first day of July, 1878.

199 DISTRICT OF INDIANA.

I, Noble C. Butler, clerk of the Circuit Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full and true copy of all that part of the decree in the cause of Union Trust Company of New York against The Indiana and Illinois Central Railway Company, as made provision for proof of the bond debt of said railway company and relating to the application of Henrietta P. Sprague to make proof of claim of ownership to certain bonds, specified and referred to in said application, and of the answer of the railway company, and of the master's report and testimony, and the exceptions of defendant to said report in said proceeding, and the final order and decree of the court thereon,

prayer for appeal and order of the court thereon, appeal bond filed therein, as fully as the same appears of record and remains of file in my office.

Witness my hand and the seal of said court, this 15th day of October, A. D. 1880.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

DISTRICT OF INDIANA.

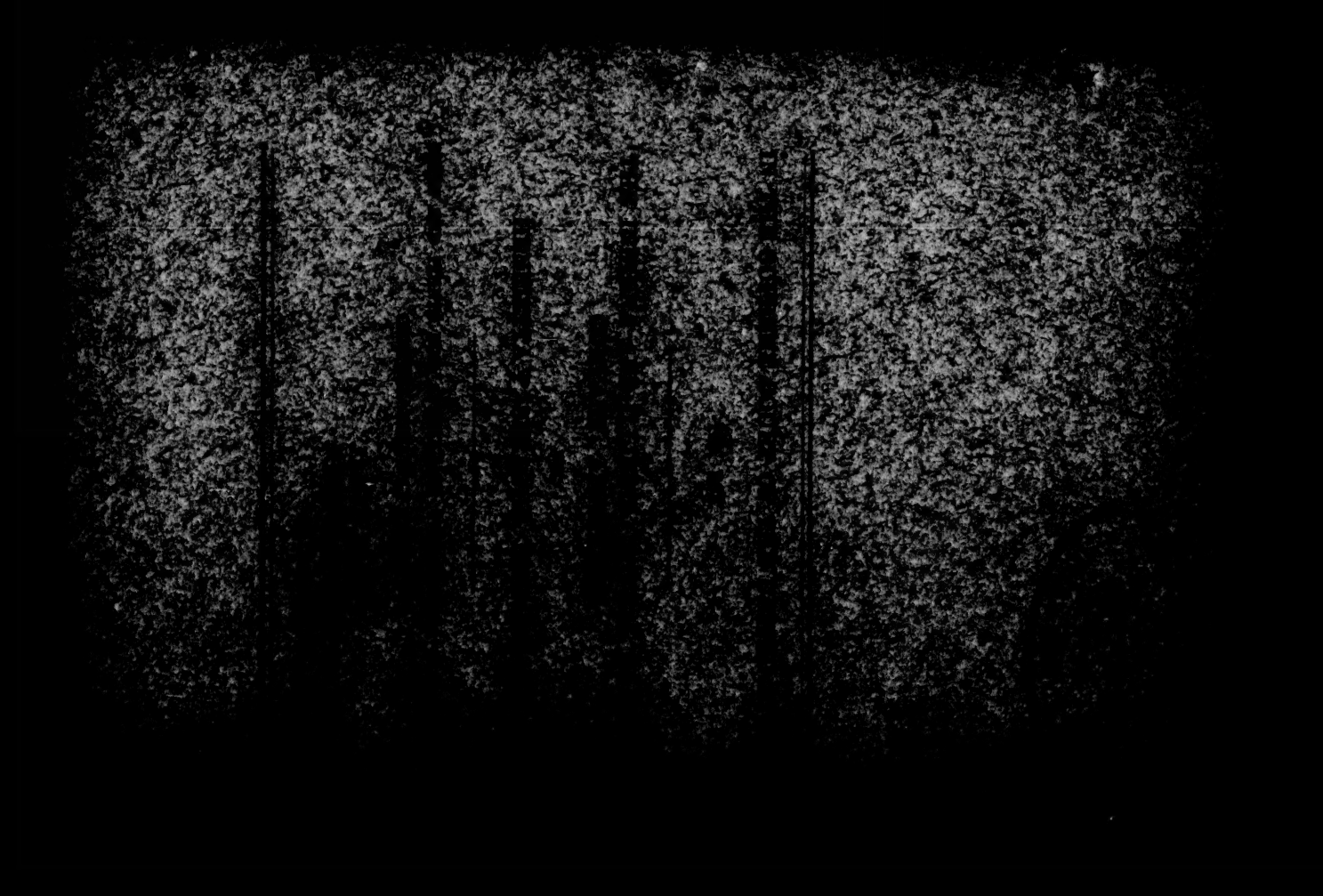
I, Walter Q. Gresham, judge of the district court of the United States for said district, do certify that at the date of the foregoing certificate, Noble C. Butler was, and now is, the clerk of the circuit court of the United States for said district, and that his attestation aforesaid is in due form of law.

Witness my hand, this 15th day of October, 1880.

W. Q. GRESHAM, *Judge.*

200 October 15th, 1880. Rec'd of defendant per committee of bondholders $61.15, costs of this transcript.

NOBLE C. BUTLER, *Clerk.*



Supreme Court

OF THE UNITED STATES.

THE INDIANA AND ILLINOIS CENTRAL RAILWAY CO.,
Appellant,

against

HENRIETTA P. SPRAGUE,
Respondent.

BRIEF FOR APPELLANT.

STATEMENT.

This is an appeal from an order and part of a decree of the Circuit Court of the United States for the District of Indiana, made in an action in which the Union Trust Co. of New York was complainant, and the Indiana and Illinois Central Railway Co. was defendant. The suit was brought for the foreclosure of a mortgage upon the appellant's property, and resulted in a decree of foreclosure and sale. An interlocutory decree directed a Master of the Court to inquire, ascertain and report to the Court the names of all persons who were holders

of bonds and coupons which had been duly issued under the mortgage, and which were entitled to share in the proceeds of the sale.

Under this order of reference, Henrietta P. Sprague, the present respondent, presented a claim to be the owner and holder of 75 bonds, numbered from 629 to 703, of one thousand dollars each, with coupons attached. The railway company, by its solicitor, objected to the allowance of the respondent's claim. The Master, John D. Howland, Esq., heard the proofs of the parties and the arguments of their counsel, and reported that Mrs. Sprague had made sufficient proof of her ownership of the bonds in question, and that they were entitled to be paid out of the purchase money of the railroad. His report will be found at folio 11, page 6. To this report the railroad company filed exceptions, which will be found at folio 185, page 96. The Court, at the May Term, in 1878, overruled the exceptions, and entered a decree, directing, among other things, that the 75 bonds of Henrietta P. Sprague, with the coupons thereto annexed, should be allowed as valid, and as secured equally with the other outstanding bonds by the mortgage foreclosed, and that said bonds be paid their *pro rata* shares out of the proceeds of the foreclosure (folio 195, page 101). From this order, and this part of the foreclosure decree in the cause, the railway company brings this appeal.

Assignments of Error or Exceptions.

The exceptions to the Masters's Report will be found at folio 185, page 96. They are thirteen in number. The error complained of in the part of the decree appealed from, is this: It being established by the evidence, and reported by the Master (see folio 18), that the railroad company has never received any value whatever for these bonds, either from Mrs. Sprague or from any other person, she was erroneously held to be a purchaser of the bonds for value and without notice, and the bonds were erroneously held to be instruments of such a character and in such a condition, as to enable her to enforce them against the company, notwithstanding the fact that the company had received no consideration for them.

FACTS.

Mrs. Sprague, the respondent, in February, 1870, made to one J. Elliott Condict, in cash or securities which were convertible into cash, two loans, one of twenty-five thousand

dollars ($25,000), and one of thirty-five thousand dollars ($35,000), in all sixty thousand dollars ($60,000).

She seems to have held or had a right to the Madison and Portage bonds. which she afterwards bought of him, as security for this loan (see fols. 29–30).

In November, 1870, the loan was settled by Mrs. Sprague purchasing of Condict 75 first mortgage bonds of the Madison and Portage Railroad Co , of one thousand dollars each, at 80 per cent., and turning in his note as part of the purchase price (see fols. 23 and 24, page 12). The Madison and Portage Railroad Co. disputed Condict's title or right to dispose of these bonds. This fact does not appear to have been communicated to Mrs. Sprague personally, but it was ascertained by her counsel, Mr. Whiting, who testified in the case, in the course of the negotiations which resulted in the purchase of the bonds now in controversy. No interest was ever paid, however, to Mrs. Sprague upon the Madison and Portage bonds, and on the 24th of June, 1871, at Mr. Condict's instance, Mrs. Sprague exchanged the 75 Madison and Portage bonds, which she had previously purchased of Condict, for 75 bonds of a thousand dollars each, of the Indiana and Illinois Central Railway Co. Before making this exchange with Condict she placed the management of the affair in the hands of Mr. John N. Whiting, whose testimony will be found at page 45, folio 86. He had interviews with the parties representing the company which was the owner of the railroad covered by the Madison and Portage mortgage (see fols. 92 and 93). He ascertained that these parties disputed Mr. Condict's title, and claimed that the bonds had been irregularly or improperly obtained by him (see fols. 93, 96, 97 and 98). The claim was substantially that the bonds had been placed in Condict's hands to be sold for the company, and that he had applied them to his own personal use. Mr. Whiting testified that he made inquiries with respect to the value of the Indiana and Illinois Central Railway bonds, and of the property upon which they were secured. He made no investigation as to the title of Condict to these bonds, or his right to dispose of them. Condict was, at the time of the transaction with Mrs. Sprague, a director of the Indiana and Illinois Central Railway Co. and a member of the Executive Committee of its Board. The by-laws of the company at that time provided that the Executive Committee should have and exercise, by a majority of its members, any power and authority which from time to time might be delegated to it by the Board of Directors. No authority appears to have been given to the committee or to Mr. Condict to dispose of these bonds (see fol. 60, page 31; see also the Master's Report, fol. 15). The transaction between Mrs. Sprague and Condict was an exchange, in which Condict re-

ceived from Mrs. Sprague certain railroad bonds which he had previously sold her, and his title to which was disputed, and sold to her in exchange these bonds issued by a company of which he was an officer. The bonds had been left with Condict for safe keeping (fol. 63). They were never sold or authorized to be sold by the company (fol. 64), and no authority was ever given to Condict to sell them (fol. 64). The Railroad Company never received any value or consideration whatever for the 75 bonds in controversy (see fols. 73 and 74; Master's Report, fol. 18). After Condict originally obtained possession of the bonds, he claimed to be a creditor of the Indiana and Illinois Central Railway Company for advances which he claimed that he had made, to the amount of twenty-five thousand dollars, and refused to surrender the bonds until this claim was settled (see the testimony of Henry B. Hammond, Esq., president of the road, folio 52). Mr. Whiting testified in regard to the transaction with Mr. Condict, and what he believed or understood as to Mr. Condict's right to dispose of these bonds (see folio 90), that he had not, so far as he knew or had at the time of testifying the slightest recollection, the least intimation but that Mr. Condict had the full right to transfer them, and that by doing so Mrs. Sprague would get an absolute title. He stated that Mr. Condict professed to have the strongest desire that the sums paid by Mrs. Sprague should be repaid her. In order to secure her, Condict subsequently, at Mr. Whiting's demand, assigned or pretended to assign to Mrs. Sprague all his right and interest in any claim, which he held against the Indiana and Illinois Central Railway Co., or any of the parties connected with it (folio 91). When Mr. Whiting was asked in what capacity Mr. Condict dealt with him, whether as an individual or as an officer of the Indiana and Illinois Central Railway Co., he answered, "at first he claimed to have very considerable control in the matter, to be a director or officer; that Mr. Seaman was one of his associates and very familiar with the matter. That he had been at the West and acquainted himself with all the facts, and he, Condict, suggested this exchange." Mr. Whiting proceeded, "I answer that question by giving you the facts, leaving you to infer the relation. I do not suppose him in any relation to the company or to himself. He came to me with statements, and upon those I acted. He asserted his entire capacity to make the exchange; that he owned the bonds; that he had made advances to the company; that they were his by the highest possible title." When asked, "then your answer would be that you dealt with him as an individual, and not as an officer of the company?" he answered, "that is a matter of inference," and added, "he claimed to own the bonds," (see folios 101 and 102, page 52). The Master (see folios 13 and 14), reported that "Mr.

Whiting, acting as Mrs. Sprague's legal adviser, heard from one of the officials of the Madison and Portage Company that there was trouble between them and Condict, and they charged the latter with having misappropriated the bonds of their company. Mrs. Sprague had then held those bonds for six months. Mr. Whiting's inquiries as to the bonds offered in exchange, seem to have gone chiefly to the question of value, his desire being to secure for his client what was best. He had frequent conversations with Condict and with Mr. Seaman, who was also a director of the Indiana and Illinois Central Railway Co., and was told by them of a great many things which they appeared to think made the bonds of the Indiana and Illinois Central Railway Co., a valuable investment, and was also assured by both of the validity of Condict's title." Again, at folio 18, the Master reports: "I think the evidence shows satisfactorily that the Railroad Company had received nothing from Condict for these bonds, but the company had trusted Condict implicitly. It had given him plenary powers. He was its vice-president; as one of its executive committee he was in lawful possession of these bonds; he was fortified in his claim of title by the assurances of Mr. Seaman and others of the committee." "Under these conditions," the master states: "I think that Mrs. Sprague and her counsel must be held to have made full inquiry; she was dealing with the persons who had the whole authority, were the very voice and conscience of the company itself;" and he therefore finds that Mrs. Sprague bought these bonds in good faith and for value, and allowed her proofs.

The bonds in question were dated April 1st, 1870; a copy of one of them will be found at folio 127, page 63. They were secured by a mortgage or deed of trust of the same date, of which a copy will be found at page 73, folio 145. At the time of the exchange by Mrs. Sprague of Madison and Portage bonds for these bonds, on the 24th of June, 1871, the bonds which she received had attached to them all the coupons, beginning from the date of the bond, 60 in number. *Of these coupons two, the one payable the 1st day of October, 1870, and the one payable the 1st day of April, 1871,* for thirty-five dollars each, copies of which will be found at folio 143, *were past due, unpaid, and dishonored.* The bond contained this provision (see folio 127), "*In case of the non-payment of any half yearly installment of interest, which shall have become due and been demanded, and such default shall have continued six months after demand, the principal of this bond shall become due in the manner and with the effect provided for in the trust deed securing its payment.*" The bond also recited that it, together with the residue of 2,750 bonds, were secured by a deed of trust or mortgage, dated the

1st day of April, 1870. The mortgage contained the following clause (see folio 150, page 76,) being its second covenant.

"*Second.—In case default shall be made for six months in the payment of any interest upon either of said bonds, when the same shall become due and payable, the whole principal sum in all and each of said bonds shall forthwith become due and payable, and the lien or encumbrance hereby created for the security and payment of such bonds may be at once enforced, anything herein to the contrary notwithstanding.*"

Exceptions to Master's Report.

These exceptions were as follows:

First.—That the Master erred in concluding that there was nothing in the evidence to affect the title of Mrs. Sprague to the Madison and Portage bonds.

Second.—That he erred in finding that the motive by which Condict professed to be influenced in offering to exchange the bonds of the Indiana & Illinois Central for the Madison and Portage bonds was that the former were a better investment, whereas Condict's true motive was the claim that was made against him for his misappropriation of the Madison and Portage bonds, and the necessity of his regaining possession of those bonds.

Third.—That the Master should have reported that Mrs. Sprague had notice through her counsel of Condict's misappropriation of the Madison and Portage bonds, and should therefore have made strict inquiry as to his title to the Indiana and Illinois Central bonds.

Fourth.—That the Master erred in stating that the 75 bonds of the Indiana and Illinois Central Railway were in the hands of Condict as chief executive of the company, whereas he should have found that they were in his hands for safe keeping, without any instruction or authority to sell or use them in any way.

Fifth.—That the Master in substance reported that previous to the 3d of May, 1871, the by-laws of the appellant's company conferred on the executive committee all the powers of the board of directors when that board should not be in session, whereas such by-law was repealed on the 3d of May, 1871, and the by-law in force at that time only conferred on the executive committee such power as the board of directors might expressly delegate.

Sixth.—That the Master erred in applying different rules to these bonds, from those which are applicable to ordinary negotiable commercial paper.

Seventh.—That the Master erred in holding that the rule

that a person who receives commercial paper over-due, is not a *bona fide* holder, does not apply to bonds of this description, and that Mrs. Sprague, who purchased the seventy-five bonds of Condict, on the 24th day of June, 1871, with two over-due and unpaid coupons attached to each bond, was, notwithstanding, a *bona fide* holder, whereas he should have held that such over-due and unpaid coupons, with the clauses in the mortgage and bond attached, made the bonds in question over-due and dishonored; and such over-due and unpaid coupons, were notice to Mrs. Sprague of the dishonor of the bonds, and subjected them to the same defence in her hands, as could have been made to them in the hands of Condict; and as the Company received nothing from Condict for the bonds, she could not enforce their payment against the Railway Company.

Eighth.—That the Master erred in applying a different rule to these bonds on account of the magnitude of the values involved in this case of securities.

Ninth.—That the Master erred in finding and reporting that the Company had trusted Condict implicitly, and had given him plenary powers, and that as one of the Executive Committee, he was lawfully in possession of the bonds; whereas, the defendant had reposed no special trust in Condict; the bonds were allowed to remain in his hands by an individual member of the Executive Committee, and not by the direction of the Company, and he had no power, as Vice-President or a member of the Committee, to sell the bonds or dispose of them, and the Master ought to have found that the statement of Seaman, another director, that Condit owned the bonds, did not give Condict title or authority.

Tenth.—That the Master erred in finding and reporting that Mrs. Sprague and her counsel made full inquiry.

Eleventh.—That the Master erred in finding and reporting that the claimant, in making purchase of the bonds, was dealing with a person authorized to make sale of the bonds for the respondent, and bought the bonds in good faith, whereas he ought to have found, if he held that the respondent dealt with the appellant by its agent Condict, that when she delivered to Condict securities which she had obtained from him, and the title to which was disputed, and when Condict accepted them and delivered to her the bonds now in dispute, as she knew that he paid his individual debts with the property of the appellant, she acted in bad faith and was not a purchaser in good faith.

Twelfth.—That the Master should have found that Condict, in making the exchange, claimed to own the bonds, and the fact that he was an officer of the Railway Company, did not induce Mrs. Sprague to make the exchange.

Thirteenth.—That the master has improperly allowed the

claim, whereas he ought to have disallowed the same, and in its allowance has come to a conclusion contrary to law and evidence.

The circumstance should be noted that the bonds produced to the Master and allowed to Mrs. Sprague by him and by the decree, were not the identical bonds purchased by her. In July, 1871, all the bonds of the issue of April 1st, 1871, were taken up, and a new mortgage made, under which new bonds were issued. Seventy-five bonds issued under this mortgage were delivered to Mrs. Sprague, to be held by her as she held the original bonds, neither party waiving any rights, legal or equitable. Mrs. Sprague's right to enforce these bonds is to be determined by her title to, and right to enforce, the original bonds.

See fol. 74, p. 39
Fol. 126, p. 62.

POINTS.

I.

We contend that the decree, allowing the claim of the respondent, Mrs. Sprague, to be the lawful owner of seventy-five bonds with coupons from the date of the bonds attached, and that such bonds and coupons are entitled to payment from the proceeds of the appellant's property, was erroneous for two reasons.

1. Because she did not purchase the bonds in good faith, and without notice that Condict, from whom she received them, was neither their owner, nor authorized to dispose of them, certainly not to dispose of them in the manner in which he did, in the exchange with her.

2. Because the bonds, at the time when she, Mrs. Sprague, obtained them, were dishonored, and not entitled to the peculiar privileges of negotiable instruments, and she acquired no better or greater title to them than that of Condict, who could have made no claim upon these bonds against the railway company.

II.

It is not denied that coupon bonds issued by railroad companies have, by the custom of trade and the decisions of the

courts, in order to facilitate the undertakings of those who issue them, become invested with the attributes of negotiable instruments, subject, however, of course, to the conditions necessarily incident to the peculiar form and character of these instruments.

Nor is it denied that the title of a purchaser of such a bond, before it is past due or dishonored, and while it is fully possessed of this negotiability, will not be defeated by mere suspicion of defect of title, or knowledge of circumstances which would excite suspicion, nor by mere negligence, however great, at the time of the transfer. There must be what the law terms bad faith.

Swayne, J., in Murray *v.* Lardner, 2 Wall, 121.

But bad faith in the acquisition of such bonds does not necessarily involve an actual participation in a theft or fraud. There may be wilful ignorance as well as guilty knowledge.

Judge Swayne in same case.

Bad faith means not only participation in a theft or a fraud, but also knowledge of the fraud, or of any facts which are inconsistent with the validity of the bonds, or the validity of the vendor's title, the existence or appearance of any features in the bonds or in their circumstances or condition, or notice of any facts, which prove that there is something wrong about them.

Where a man bought bonds on the 20th of May, the non-payment of a coupon which had become due on the 1st of that month, when all previous coupons had been paid, and the vendor stated that this would be paid, was held by this Court not to be enough, standing alone, to affect the position of one who had paid value for a bond.

Cromwell *v.* Sac Co., 96 U. S., 51.

But where there were several past due and unpaid coupons, their presence was held to be of itself an evidence of dishonor, and with the fact that an authority, which was given to the president of the company to designate the place of payment, had not been exercised, taken in connection with the low price at which the bonds were offered, was held abundantly sufficient to affect the purchaser with notice of invalidity in their issue.

Parsons *v.* Jackson, 99 U. S., 434.

This Court said in that case that the presence of the over due and unpaid coupons was itself an evidence of dishonor, sufficient to put the purchaser on inquiry.

Judge Bradley, giving the opinion of the Court, speaks of these circumstances, of which the past due coupons was the most marked, as being "so pointed and emphatic as to be *prima facie* inconsistent with any other view than that there was something wrong in the title."

Judge Bradley's Opinion, s. c., pp. 440, 441.

III.

The respondent did not purchase the bonds in question in good faith. She had abundant cause to question their integrity, evidence of dishonor sufficient not only to put her on inquiry, but to show that Condict had no title in the bonds, or right to dispose of them to pay his own debts, or redeem securities which he was accused of misappropriating.

Mrs. Sprague, as well as her counsel, Mr. Whiting, made inquiries as to the value of this description of bonds. He must have learned, what the Court will infer, that the interest on the bonds which had been issued by this company had, up to that time, been regularly paid.

The exchange of the Madison & Portage R. R. bonds, which she held, for the bonds now in dispute, was proposed by Condict. Mrs. Sprague had never received any interest on the Madison & Portage bonds. She was informed, through her counsel, before she made the exchange proposed by Condict, that his title to those bonds, or any right to dispose of them was denied by the officers of the company, who accused him of doing in respect to their company, just what he did in this case with the corporation now appellant, using their bonds and the proceeds for his individual benefit, to pay his private debts, without authority.

See fols. 46, 47, 49, 52, 63, 64, 69, 84, as to the manner in which Condict obtained the bonds in question.

Fols. 92, 93, 94, 98, 103, 104, as to his transactions with the Madison & Portage bonds.

Mrs. Sprague's counsel insisted that Condict should make good the money which he had obtained from her, with the Madison & Portage bonds, first as a loan, and afterwards as a sale (fol. 94). He insisted that the proposed exchange of these bonds for the Indiana & Illinois Central Railroad bonds should not be "a finality," but that "Condict should hold himself responsible for the debt, which he consented to do" (fol. 90). Condict afterwards made an assignment of a claim against the present appellant, to Mrs. Sprague, to secure the indemnity which he admitted that he was bound to make to her against any loss in the transaction.

See fols. 91, 98, 99, 105, 106.

Mrs. Sprague, therefore, acquired the bonds in controversy, not by a plain ordinary purchase, but as security for a liability which Condict was under to her, first for $60,000 borrowed money, and next for an illegal and invalid transfer to her of property to satisfy that indebtedness. Condict is under that liability to Mrs. Sprague to this day. This was not parting with value on the part of Mrs. Sprague.

She knew, and her counsel knew, that she was dealing with a man who had already committed upon another corporation precisely such a fraud as he has perpetrated here. Mr. Whiting's only assertion as to the Madison and Portage bonds is that as Mrs. Sprague was ignorant of the fraud of Condict when she took them, it would not affect her title (fols. 96, 104). She cannot be held equally ignorant and innocent, when she has a second transaction of a similar kind with the same person.

She received from Condict bonds upon which two coupons were past due and unpaid, taking these coupons with the bonds, when she must have believed that the company was solvent and paying its interest, and had paid those coupons upon all the bonds which it recognized. This was not a case where a corporation had by accident, or from temporary and unforeseen circumstances, been unable to meet one payment of interest on all its bonds. It was a neglect or refusal to pay on these particular bonds, and it was a case where the presence of these overdue coupons affected Mrs. Sprague with notice of the invalidity of the bonds.

Parsons *v.* Jackson, 99 U. S., 434.

Mrs. Sprague dealt with Condict, as her counsel testified (fols. 101, 102, 103), relying upon his position and authority as an officer of the appellant company, seemingly relying on an estoppel against the company, by reason of the acts and statements of a Mr. Seaman, one of the directors, and of Condict himself. Yet she accepted from this officer of a corporation claiming to have authority from the corporation (fol. 101), a transfer of bonds of that corporation, which bore on their face the evidence that they had never been duly issued by the corporation, in satisfaction of, or as security for his individual debt to her. Of course, she must have known that the corporation of which Condict was an officer, could receive no value or advantage from the delivery to him of a parcel of the disputed bonds of another railway, which he was anxious to regain to protect himself from prosecution. She, therefore, knew if she was dealing with Condict as an officer of the appellant, that the transaction would be a fraud.

It was a manifest error for the master to find, and to base his decision on the finding (fol. 19), that the respondent "in making purchase of the bonds of the Ind. & Ill. Cent. Railway Co., was dealing with a person authorized to make sale of said bonds for defendant;" and, therefore, "that she bought the bonds in good faith" (see fols. 18, 19). The fact that Condict in such a transaction preferred to rely upon his authority to act for the company—coupled with the fact that his bonds were unrecognized and dishonored—was sufficient of

itself to charge a person dealing with him with notice of his fraud.

The reasoning and language of the opinion in Parsons *v.* Jackson (*supra*) lead necessarily to the conclusion that in that case, if there had been no other damning fact than the existence of the past due coupons unpaid, that fact, coupled with the small price paid for the bonds, would have stamped the transaction with bad faith. We present, in this case, the same mark of dishonor, in the unpaid interest warrants, and it is backed by an evidence of want of good faith equally strong with an insufficient price—namely, that the bonds were taken from the officer of a corporation as security for, or in satisfaction of, an individual debt.

IV.

The proofs established, the Master reported, and the Court held, that the appellant received nothing from Condict for the bonds (fol 18).

Mrs. Sprague, the respondent, paid nothing to the appellant. She obtained the bonds in consideration of the surrender or return to Condict of certain other securities which she had taken from him, which were of questionable value and of disputed validity.

Condict did not receive the bonds from the railway company as his own, or to repay or secure any indebtedness of the company to him. There was no such indebtedness.

Fols. 46, 47, 51, 52, 62, 63, 64, 69, 73, 82, 85.

Condict was not clothed by the railway company with an apparent right to dispose of the bonds. He was simply known to the respondent (folio 101) as one of the directors of a corporation, which had been reorganized by the election of Mr. Hammond as president (fols. 50, 53). Before Mr. Hammond assumed control, little or nothing had been done toward building the road (fols. 75, 78). The completion of the work was expected to be assured, and its value and the value of its bonds established, by the connection of Mr. Hammond and his friends with the enterprise. At the period of the transactions between Condict and Mrs. Sprague with reference to the bonds, all the affairs of the company were awaiting the movements of Mr. Hammond. All this was known to Mrs. Sprague or her counsel, and they relied upon the proposed reorganization as a reason for taking the bonds in lieu of those she held (see fols. 88, 89).

Certainly Condict was not clothed by the company with any apparent authority to use these bonds, by exchanging them for other bonds which would become his property when ob-

tained, and which he sought to obtain in order to relieve himself from responsibility.

In point of fact the appellant not only did not authorize Condict to dispose of the bonds in question, but its officers had no suspicion that he had done so, until he was found unable to return the bonds which had been lodged with him for safe keeping, when he trumped up a claim against the company.

Fols. 46, 47.

Condict called himself a banker and broker, and had an office of his own (fol. 21.) The railway company's office was in Indianapolis. It had no office in New York. Mr. Risley had possession of such of its books as were kept in New York until Mr. Haight was elected treasurer, and afterwards he had them.

Fols. 50, 51, 72, 73.

The law will hold a person, dealing, as Mrs. Sprague did, with an agent and trustee, to diligence and the utmost good faith.

Smith *vs.* Ayer, 101 U. S. 320.
Hoffman *vs.* John Hancock Ins. Co., 92 U. S. 161.
Bank of Genesee, *vs.* Patchin Bk. 3 Kern, 309.
Pearce *vs.* Mad. & Ind. R.R. Co., 21 How 441.
Green's Brice's Ultra Vires, 2nd Ed., p. 268, note and cases cited.

V.

It is most confidently contended by the appellant upon these facts and considerations, that, in any view which can be taken of the bonds in controversy, the respondent is not a purchaser in good faith, is chargeable with notice that the person from whom she received them had no authority, right, or title, which would sustain the transfer which he made to her, and that she cannot enforce the bonds against the appellant.

VI.

But it is further contended, that the bonds in question, at the time when Mrs. Sprague received them, were dishonored, and no longer entitled to the exceptional privileges conferred by law upon commercial paper transferred before maturity, and which have been extended to this class of securities before their maturity or dishonor. Mrs. Sprague acquired no greater rights in these bonds than Condict possessed.

VII.

The peculiar privileges of negotiable paper have been extended to corporate coupon bonds, in order to promote the purposes for which such bonds are issued, to wit, borrowing money upon them for the purposes of the corporations issuing them. The law accordingly deprives such instruments of the attributes of negotiability when they cease to be available for that purpose. The rules which are applied to these bonds, are somewhat different from those applicable to bills, notes, or cheques, as the reasons for the rules are different.

It cannot be said that a bond, like a cheque, or a bill of exchange, represents a fund or a sum of money which is appropriated to its payment, and which may be supposed no longer to continue so set apart after the bill has matured.

Again, the coupons or interest warrants attached make the regular payments of interest a more integral and essential part of the instrument, and of the contract which it represents, than is the interest on an ordinary obligation or contract of indebtedness. Such bonds are purchased and are given currency for purposes of continuous investment, and the regular payment of the coupons attached, is a material feature of such an investment. When in the case of any bond of this description it appears that there has been a failure or refusal to pay the coupons attached, not from some accident, on a single occasion, or for a few days, but repeatedly and permanently, and so as to indicate that as far as that issue of bonds, or that particular bond, is concerned, it or they are no longer to be marketable, that the corporation issuing them will no longer perform its engagements so as to make them suitable for investment, then, as to such a bond or bonds, the reason for the application of the rule ceases. *Cessante ratione, cessat ipsa lex.*

The rule and its application are somewhat artificial, and its limitations must also be so. It has been held that a bond which is redeemable, though not payable, after a certain date, ceases to be negotiable at that date, though no notice of an option to redeem had been given by the obligor.

See Texas *v.* White, 7 Wall., 700.

And on the general question of negotiability of bonds.

Vermilye *v.* Express Co., 21 Wall., 130.

White *v.* Vt. & Mass. R. R. Co., 21 How., 575.

Mercer Co. *v.* Hacket, 1 Wall., 83.

VIII.

The bonds received in exchange from Condict by Mrs.

Sprague, June 24th, 1871, had coupons attached, payable every six months after April 1, 1870, the date of the bond; of these, the two which had thus matured, one due October 1, 1870, and one due April 1, 1871, were past due and unpaid. The coupons are to the effect, that the Company will pay the bearer $35, in New York or London, at the holder's option, on the 1st day of October, 1870 (or April, 1871); no demand is required or mentioned, and no place of payment (other than the cities named) is specified.

See coupons, p. 72, fol. 143.

There is no evidence to show whether the company was in default on all its bonds or only on these.

The bond (fol. 127) contained a clause, that "in case of the non-payment of any half-yearly instalment of interest, which shall have become due and been demanded, and such default shall have continued six months after demand, the principal of this bond shall become due in the manner and the effect provided for in the trust deed, securing its payment."

The mortgage (p. 76, fol. 150) contains this provision:

"*Second.*—In case default shall be made for six months in the payment of any interest upon either of said bonds, when the same shall become due and payable, the whole principal sum mentioned in all and each of said bonds, shall forthwith become due and payable, and the lien or incumbrance hereby created for the security and payment of such bonds may be at once enforced, anything herein to the contrary, notwithstanding."

IX.

No demand was necessary to make the coupons due. The interest, and the warrants for the payment of the interest, became due peremptorily and absolutely every six months, just as the principal will become due at the maturity of the bond, without any ceremony of demand.

Daniel on Negotiable Inst., Vol. 2, p. 142.
First Nat'l B'k *v.* County Comm'rs. 14 Minn., 77.
Arents *v.* Commonwealth, 18 Grattan, 750, 781.
B'k Louisiana *v.* New Orleans, 5 Am. Law Rep., N. S., 555.
North Penn. R. R. *v.* Adams, 54 Pa. State R., 96.
Langston *v.* So. Car. R. R., 2 So. Car. R. (N. S.), 248.
Wallace *v.* McConnell, 13 Ves., 136.
Truman *v.* McCollum, 20 Wis., 379.

X.

The clause in the bond defining the effect of a default in interest, may have its effect upon each bond and its holder, without reference to the others or the whole issue.

If there were no clause in the mortgage bearing upon this point, such a clause as this would, in case of a known default, dishonor the bond as to which it occurred, make it due, and no longer negotiable, after six months. The demand which the holder is entitled to make would be presumed to have been made, where a question of notice or of negotiability was presented.

XI.

But the controlling provision as to this point is that contained in the mortgage, the second of its covenants. A purchaser of these bonds is affected by this provision, and has notice of it as fully as if it were written out in full in the bond.

The bonds expressly refer to it, but this is not necessary. The fact that the bonds are and are known to be issued under and secured by the mortgage, makes every purchaser and holder chargeable with notice of the contents of the mortgage.

McClure *v.* Oxford, 94 U. S., 429.
Caylus *v.* N. Y., Kingst. & S. R. R., 49 How. (N. Y.), 100.
Kennion *v.* Kelsey, 10 Iowa, 443.
Schoonmaker *v.* Taylor, 14 Wis., 363.
Plank R. Co. *v.* Murray, 15 Ill., 336.
Tiernan *v.* Hinman, 16 Ill., 400.
Benjamin *v.* Elmira R. R., 49 Barb., 449.
Hunt *v.* Frost, 4 Cush., 54.
Hanford *v.* Rogers, 11 Barb., 18.
Gammen *v.* Freeman, 31 Maine, 243.
Brownlee *v.* Arnold, 60 Mo., 79.
Texas *v.* White, 7 Wall, 700, 735.

XII.

The respondent thus received in exchange for her dishonored and disputed Portage R. R. securities, bonds which were conditioned that if default should be made upon any bond of the issue in the payment of any interest, and should continue

for six months, the whole principal sum of all the bonds should forthwith become due and payable. At the time when she obtained the bonds, there had been a default in interest upon all the bonds transferred to her, which had continued for six months, besides a second following default which had run three months. The bonds were, therefore, by their terms, or the terms of the mortgage securing them, due and dishonored, and no longer negotiable. The respondent acquired no better title than Condict had. She could no more enforce them than could he, and it is admitted that he could not.

XIII.

It is, therefore, submitted:

1. That if Mrs. Sprague dealt with Condict as an individual, selling or transferring to her, bonds which were his individual property, as an indifferent person might have done, the bonds which he transferred were past due, and had ceased to be negotiable instruments, and he transferred to her no better title, and no greater right to enforce them, than he himself had.

2. If the transaction is affected by the relation in which Condict stood to the appellant, then the bonds in question could only have been considered as bonds belonging to, and to be disposed of, by the company making them, for its own benefit, not yet issued, and therefore carrying full sheets of coupons. But then it was a palpable fraud for Condict to dispose of these bonds with two coupons for interest attached, payable before their actual issue, and for Mrs. Sprague to accept a transfer of them.

It was a still greater and equally manifest fraud for him to transfer, and for the respondent to receive in satisfaction of, or as security for his private obligation, securities which, in this view of the case, were the property of the corporation.

In either aspect of the case Mrs. Sprague has no more claim upon this company or its property as the holder of these bonds, than Condict would have had.

XIV.

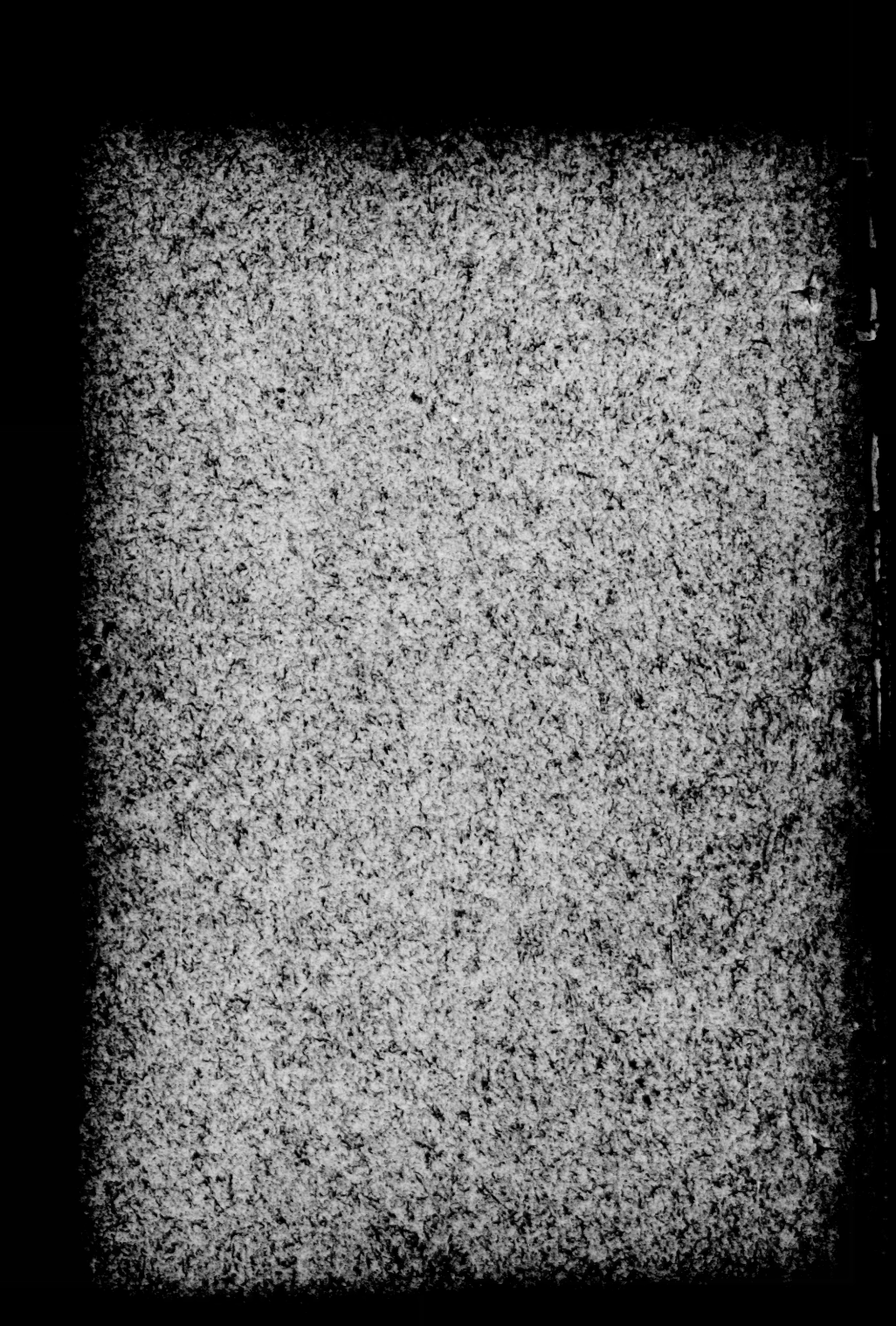
The case is not one in which the respondent can ask to be regarded with favor or to be treated with indulgence. If she can succeed, it must be because the Court is compelled to ap-

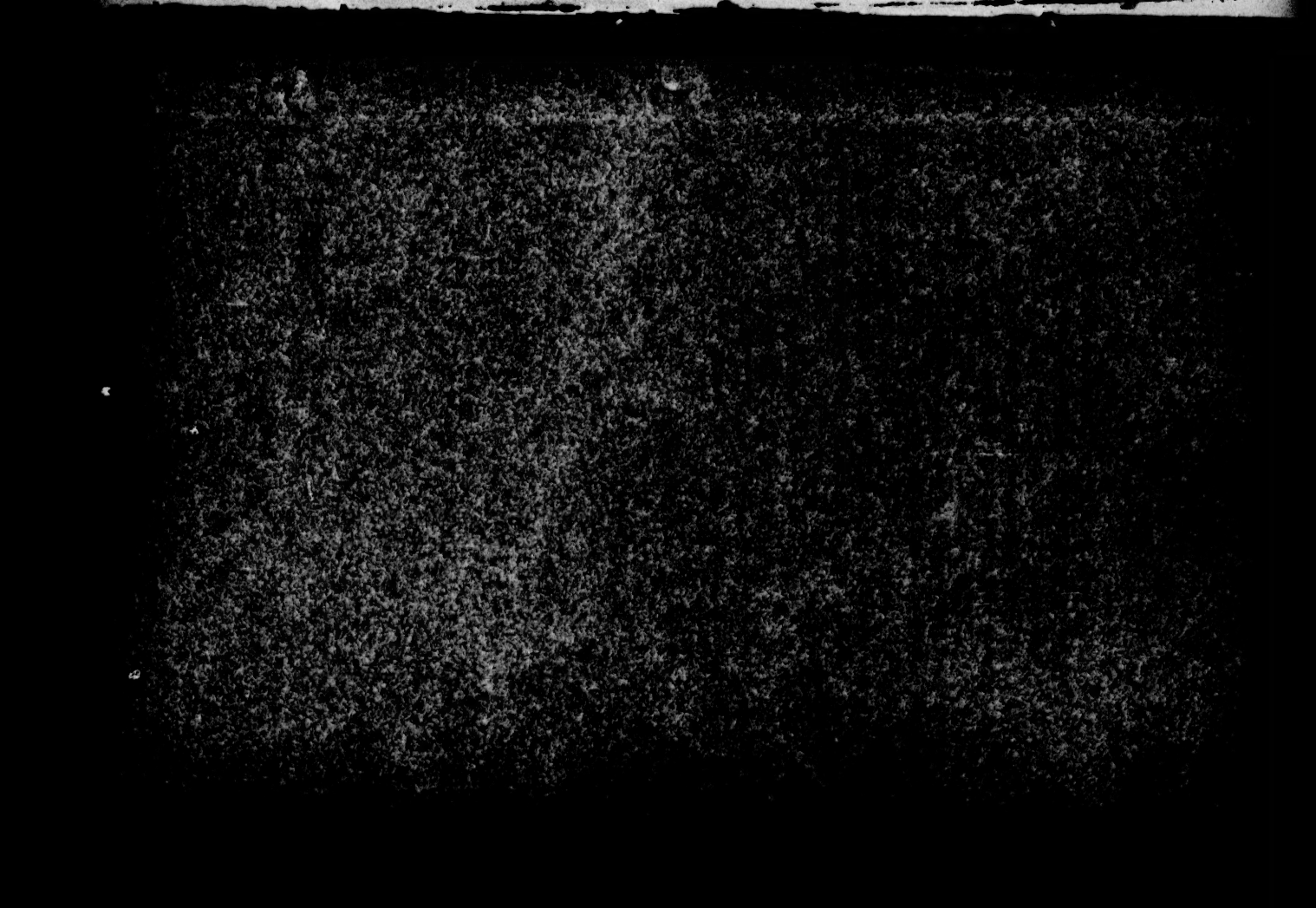
ply an artificial rule made to assist the sale of railroad securities and the undertakings of railroad companies, and to protect people who part with money in entire good faith and without suspicion, to a case where the interests on account of which negotiability has been given to such bonds, will be injured by such a decision, and where the absence of real good faith and plain dealing is conspicuous.

XV.

The portion of the decree appealed from should be reversed, and the claim of the respondent dismissed.

JAMES EMOTT,
JOSEPH E. McDONALD,
Of Counsel for Appellant.





Supreme Court of the United States.

No. 263.

THE INDIANA AND ILLINOIS CENTRAL RAILWAY COMPANY,
Appellant,

vs.

HENRIETTA P. SPRAGUE,
Respondent.

Appeal from the Circuit Court of the United States for the District of Indiana.

Brief for Respondent.

The appellant is an insolvent railway company, whose railway and property has been sold upon foreclosure of a mortgage made to secure an issue of bonds.

The decree in that foreclosure provided for a reference to take an account of the bonds secured by the mortgage. The respondent claimed to be the holder of $75,000 of such bonds. The appellant resisted her claim, on the ground that the bonds were not valid in her hands. The Master reported in her favor. The Company excepted to that report. The Circuit Judge overruled the exceptions and confirmed the report, and made a decree in the respondent's favor, from which the Railway Company appeals here.

Henrietta S. Sprague, the claimant, was the widow and administratrix of John H. Sprague. John Elliot Condict was a friend of her husband, of long standing, doing business in New York in railway securities, under the style of "Condict & Co., Bankers and Brokers." In February, 1870, Condict applied to Mrs. Sprague for a loan of $25,000. Before it had matured, he advised her to buy, and agreed to sell her $75,000 of the First Mortgage Bonds of the Madison and Portage Railroad Company, for which she paid him $60,000—$25,000 in the loan theretofore made him, and the balance in securities at the market price of the day, and in cash. The purchase was concluded in November, 1870, but, as Mrs. Sprague had not all the money on hand then, she furnished Condict with a certificate of Delaware and Lackawanna R. R. Co. stock, upon which the balance coming to him was borrowed for the time, until finally paid.

In May, 1871, and after the Portage Company had failed to pay interest (fol. 26), Condict offered to exchange her Portage bonds for a like number of the appellant's bonds of the issue of 1870, which he stated to be a better security (fols. 29–31). She consulted her counsel, who inquired of various persons informed in financial matters, and of Condict himself, and of one Seaman, both officials of the Company, in respect of appellant's bonds, became satisfied that the change would be for Mrs. Sprague's advantage, and advised the exchange, which was made (fols. 86–89).

In the year 1872, the appellants desiring to retire the bonds of the issue of 1870, and to substitute bonds issued under the mortgage of 1871, the one since foreclosed, arranged with Mrs. Sprague for an exchange of the bonds received from Condict for a like number of bonds under the new mortgage, subject to whatever equities either party might have in respect of the bonds received from Condict (fol. 74).

The appellant claims that Condict received the bonds from it for safe keeping, and had no right to part with them: that Mrs. Sprague had reason to know this; *first*, because there were unpaid coupons attached to the appellant's bonds when she received them; and, *second*, because her counsel was informed that it was claimed that Condict had so dealt with the Portage bonds she had previously received of him.

POINTS.

First Point.—The unpaid coupons attached to the appellant's bonds when delivered to respondent, were not notice of the dishonor of the bonds.

In the nature of things, no man can give a better title than he has. But the necessities of trade have made it requisite that certain sales, even if made by those having defective title, should nevertheless operate to pass a valid title: one better than the owner had, free from equities or defences which he might have set up.

This was first established of sales in market overt. Afterwards the like necessity caused this law merchant, which vested in *bona-fide* purchasers a perfect title, to be extended to commercial drafts, and then to all other paper of the kind.

Latterly it has been extended to corporate bonds, although under seal, and therefore formerly not within the class of negotiable instruments (15 Wendell, 256), and to other like securities for money, intended to pass by delivery.

"Bonds for the payment of money, with interest warrants attached, are every-
"where encouraged as a safe and convenient medium for the settlement of bal-
"ances among mercantile men; any source of judicial decision calculated to
"restrain or impede their free and unembarrassed circulation, would be contrary
"to the soundest principles of public policy."

"Such instruments are protected in the possession of an endorsee, *not merely*
"because they are negotiable, *but also because of their general convenience in*
"*mercantile affairs.*"

Smith v. Sac County, 11 Wallace, p. 150.

"These securities are found in the channels of commerce everywhere, and their
"volume is constantly increasing. They represent a large part of the wealth of
"the commercial world. In Miller v. Race, Lord Mansfield held there was no
"difference in principle between bank notes and money. In Grant v. Vaughan,
"he held that there was no distinction between bank notes and other commercial
"paper. At that early period his far reaching sagacity saw the importance and
"the bearings of the subject."

Murray v. Gardner, 2 Wallace, pp. 121, 122.

Thus it will be seen that the usages of trade and the policy of the law, alike favor the *bona-fide* holder of such instruments:

"He is a favorite of the law, and his rights are always guarded by the Courts "with great care and liberality *from respect to the interests of trade and commerce.*"

Claflin v. Farmer's Bank, 25 N. Y., 293.

But when commercial paper becomes due and is dishonored, it becomes unfitted to perform the functions for which it was created, either "as a settlement of balances on hand," or "as an anticipation of balances to be received." The refusal of a draft indicates that the drawer had no balance on hand. A note dishonored, that the promise is not to be performed. In either event, if the paper appears to be dishonored, it ceases to pass in the usual course of trade.

Such paper is, *therefore, and on that account*, by the law merchant no longer protected.

Farrington v. Park Bank, 39 Barb., 651.

Being no longer fitted for the purposes of trade, the maker can set up his latent equities against it, because the holder, when he takes the paper, could learn by enquiring from him, what objection he has to the paper.

Applying these principles to railway bonds it will be seen that the non-payment of the coupons does not necessarily put the holder in the category of taking a dishonored security.

If the unpaid coupon has been cut off the bond and removed, then, of course, it affords the purchaser no notice that the interest is unpaid. The interest upon such a bond does not seem to be unpaid; and the holder is entitled to hold the bond equally as if the past due coupons had been paid.

But if there be unpaid coupons on the bond when bought, that of itself would not constitute such a dishonor of the bonds as to charge the purchaser with the latent equities.

The interest is a mere incident to the debt; compensation for the deferred payment of the principal. The coupons are separate obligations for the interest, *payable upon demand, and they are continuing securities* (Merritt *v.* Todd, 23 N. Y., 28), *not due until demanded.*

It constantly happens that on many bonds they are not demanded for weeks, months and years after the day fixed for their payment.

They are all, besides, part of one issue, secured by one mortgage, but uttered by the Company at various dates, as they may be taken up for investment. After the first six months from its date, every bond still held by the Company will have past due coupons on it, which the Company may cut off when it sells the bonds; or, for convenience of accounts, leave on to be drawn, and have allowed for in the purchase; or leave on by accident. The presence of unpaid coupons on a bond may indicate, therefore, that they have not been demanded; that the holder may have given grace; or that the Company refuses to pay. Hence, they do not constitute notice that even the interest is in default. But if they did, they, at most, indicate that the Company has failed to pay the interest, and furnish no presumption that it will refuse to pay the principal at maturity.

From the very nature of the case, the large sums of money required to construct railways cannot be procured from any one individual. Accordingly, to effect such loans, it has been found necessary to make promises to pay, of moderate amount, intended for permanent investment, payable to bearer, and maturing at remote dates; with separate obligations for the semi-annual interest; and secured by a deed of trust for the benefit of all the holders. And the nature of the enterprise has further made it necessary that these obligations, although in form, time of payment, and security, wholly unlike ordinary commercial paper, should pass by delivery and be protected by the law merchant as such paper is.

Such securities have been used as a means of raising money not only by Railway Companies, but by the National Government, the States, Counties and Municipalities, by all descriptions of corporations, and largely by individuals. Bonds with coupons or separate notes for interest being extensively used in some of the States in loans to individuals, especially where the money is expected to be obtained from different parties.

To hold that the moment the debtor ceases to pay interest the character and negotiability of such obligations is changed, would effectually put an end to the traffic in such securities,

and to the purposes for which they are issued, and lead to endless confusion. If the bond was dishonored because a coupon was not paid, would its negotiability be restored when that coupon was paid? If the bond provided that upon default in interest for a certain time the principal should become due, and there had been such default and the bond had thereby become due, would the negotiability of the bond be restored by removing the coupon for this interest? Indeed, how could the usual transactions in such securities be continued if the doctrine of the appellant should prevail?

Of the existing railway obligations, more than a majority have made default in payment of interest. Of the bonds now quoted at the New-York Stock Exchange, much the larger part have been in default. The daily traffic in them, amounting to millions, is upon the basis that they are protected by the law merchant, and that the person who buys them without notice for value, can hold them against all the world.

No distinction in practice has been made between bonds on which interest is unpaid, and those on which it is promptly paid. Any other doctrine would defeat the whole purpose for which such securities are authorized.

The policy of the law and the established course of trade are, therefore, against any such doctrine. According to both we are entitled to recover.

None of the cases cited conflict with this.

Newell *v.* Gregg, 51 Barbour, 263, was not analagous. There the note was for two years, with annual interest. The first year's interest was not paid, but the note was paid before maturity, although not taken up. The holder, thereafter, but before maturity, fraudulently sold the note, and called the attention of the plaintiff, at the time, to the fact that the first year's interest on the note had not been paid. The Court say, "the "entire debt was evidenced by one written promise to pay, which "had been broken when Gregg purchased the note, of which "dishonor he had notice.

Neither is the case in Minnesota parallel. It was the case of the purchase of bonds which had been stolen, and on which the coupons for many years had not been paid, although paid upon

lal the rest of the issue, which peculiarity the Court considered notice of the invalidity of those bonds.

The direct reverse has been held in Massachusetts and Wisconsin, and lately in this Court.

North America v. Kirby, 108 Mass., 497.
Boss v. Hewitt, 15 Wis., 260.
Cromwell v. Sac County, 96 U. S., 51.

So much for coupons generally. But it so happened that the coupons to these particular bonds were, upon presentation and surrender, payable "*to the bearer hereof in New York or London, at the holder's option*" (page 63); and until such option had been exercised and the coupons presented *they were not due.*

So the bonds were to become due on default of interest for six months. *But only in the event interest was demanded* (fol. 146).

It may be insisted that the mortgage provided that upon the non-payment of interest for six months the principal of the bonds shall come due, whether demanded or not. The phraseology of the mortgage is somewhat obscure; but it would be unreasonable to hold that when a bond provided that it should become due at the expiration of six months after demand and default of interest, it should, nevertheless, become due at an earlier period, and before any demand was made, because the mortgage which was security for it so provided. Undoubtedly, reference to the mortgage in the bond might charge the holder with the knowledge of its contents; but a misrecital of the terms of the bond would not be binding upon him, and he would have a right to hold upon the terms of the bond, which is the controlling evidence of the debt to which the mortgage is a mere incident.

Indeed, the mortgage provided that in case of default for six months of the interest on either of the bonds, this whole issue of bonds should become due, absolutely; *i.e.*, whether the holder of the bonds so wished or not.

If that provision is to control, then it would be in the power of the Company, at any time, by making default on one bond to put the whole issue in the position of dishonored securities,

while appearing to be neither due nor in default — a condition of things that would be intolerable.

Besides, it is to be borne in mind that, in fact, there was no interest due upon the bonds in controversy; not only because none had been demanded, but because, in fact, none had accrued. Until a bond was issued, and so long as it remained in the hands of the Company, it did not draw interest.

Second Point.—But whether past due or not, a purchaser in good faith and without notice, of bonds payable to bearer, from an officer of the Company clothed with apparent authority to dispose of them, is entitled to be protected.

The Company insist that Condict never accounted for the bonds. This he denied, claiming to be entitled to hold them upon a balance due him (fol. 69). And that there was such a balance due him appears. In July, 1871, Lazare submitted a proposal providing that the Company "shall pay all debts now existing, incurred on its account by Lazare, CONDICT, and Seaman" (fol. 119); and Mr. Hammond tells us that to this proposal was annexed a statement by Condict of his firm's advances (fol. 71), against which it was added they held "One Hundred Thousand Dollars" of bonds, of which the $75,000 in question were part (fol. 69). This proposal the Company "accepted upon the terms and conditions therein specified" (fol. 121). And the Company carefully abstained from calling any of the witnesses who would be likely to know about this, and contented themselves with the negative statement of the Secretary as to what appeared by the books and his knowledge.

But whether Condict accounted for these bonds or not, his power to dispose of them was complete.

The Company had no President—Mr. Hammond did not accept office until the 3d of July (fol. 50). In the interim, Condict, who was Vice-President, was also acting-President (fol. 57). The Board, which only met from year to year (fol. 67), intrusted

all its authorities to an Executive Committee (fols. 58, 66), which consisted of Lazare, the contractor to build the road, Condict, and Seaman. Lazare, with whom Condict was interested (fol. 85, 119), was at the West (fol. 82), so that Condict, who was also acting-Treasurer (fol. 82), was, with Seaman, the only authorized representative of the Company in New York.

The Company had originally issued $500,000 of bonds (fol. 58). These had been hypothecated by the Executive Committee; $300,000 had been returned (fol. 62), and had been, by the Treasurer, duly placed in the hands of the Executive Committee —Condict, Seaman, and Lazare—for disposal. They had turned out $200,000 to parties to whom, we are informed generally, "they belonged" (fols. 63, 66); and of the remaining $100,000 Condict took $25,000, which he disposed of to Mr. Van Der Lip, who borrowed money upon them from the Bowery Bank, which the Company subsequently paid (fol. 54), and sold the other $75,000 to Mrs. Sprague in exchange for her Portage bonds (fol. 66).

Whoever, therefore, took these bonds of Condict in good faith and for value, was entitled to hold them against the Company, whether Condict was authorized to dispose of them or forbidden; whether he accounted for what he owed for them, or did not.

The rule that when a principal clothes his agent with a general power, an innocent person dealing with him on the faith of such appearance, can hold the principal, although the agent was, in fact, acting in direct violation of his instructions, is a rule as much in force in Indiana as in New York. As between two innocent persons, that one must suffer who has afforded the wrongdoer an opportunity to do the wrong.

A shopkeeper might as properly ask me to return the goods I bought over his counter, because his clerk failed to put the money he took for the goods into the till, as for the Company to now seek to impeach Mrs. Sprague's title on like account.

And this is as true of securities not negotiable as of negotiable securities.

National Bank of Washington v. Texas, 20 Wallace, 81.
Moore v. Nat. Bank, 55 N. Y., 41.
McNeil v. 10th Nat. Bank, 46 N. Y., 333.

If it be objected that Condict spoke of the bonds as his own, still, it remains, that the bonds had been countersigned by the

Trust Company for circulation, and were payable to bearer. The holder had been thus clothed with the evidence of title; and so, when Condict declared the bonds were his, and the Company stood by in the form of its President and a majority of its Executive Committee and asserted affirmatively Condict's right to dispose of them, surely, whether the securities were negotiable or non-negotiable, the Company was after that estopped from disputing Condict's title.

Third Point.—And Mrs. Sprague purchased in good faith and without notice.

She was called by the Company as its witness, and testified most positively as to her *bona-fides* in taking these bonds (fols. 40–2).

A transaction which, even if she gets the meagre dividend in dispute here, will still prove most unfortunate for her.

So her counsel who acted for her in this matter, and by whose action it is now claimed she is bound, has testified as to his good faith (fol. 90, 107).

It is claimed that Mrs. Sprague could not have purchased in good faith, because, there being a dispute about the Portage bonds, she should have suspected Condict's title to these Indiana bonds, especially as these bonds had matured coupons on them.

But she never heard of this claim about the Portage bonds until long after she had bought them. She regarded them as valid, as in her hands they were in any event. But even if she had not so regarded them, the fact that Condict was liable to her for them would naturally lead her to assume that he would be anxious to get rid of dispute about these securities. So far from that dispute making him less willing to give her full value for the money he had of her, it should only have made him more anxious to do so, as it touched his good faith and business standing; and was the more reason why he should give her the valid securities that he ought to have given her, instead of disputed securities. That did not, therefore, constitute any reason

why she should have regarded these Indiana securities as not good, or, as not Condict's.

I agree that taking bonds with unpaid coupons constitutes one item of evidence from which, with other proof, bad faith may be inferred. If, for instance, these had been the only bonds with unpaid coupons — if all its other interest had been promptly paid by the Company, this might be a circumstance to indicate notice that there was some defect in the bonds. But it so happens that none of the coupons upon any of the bonds of this issue had ever been paid (fol. 44).

This was a railway in course of construction, and its interest obligations — as is not uncommon in such enterprises — had not been promptly met.

Mrs. Sprague could no more have known or had cause to suspect that the Company questioned or would question the bonds Condict had to dispose of, because the coupons on those bonds had not been paid, than if they had been. That constituted no distinction of those bonds. In this respect all the bonds of the Company were alike; and as Condict was to make up to Mrs. Sprague the interest in arrears on the Portage bonds, the presence of past due coupons on these bonds, if observed, must have seemed to Mrs. Sprague a most natural thing.

That the Portage Company had given Condict bonds to sell, and a dispute had arisen as to whether he had accounted for the proceeds, was surely no reason to suppose that he was undertaking to dispose of the bonds of this Company of which he was the chief executive, without authority. What can the disposition an agent may make of the proceeds of the property of the principal have to do with his authority to sell?

But whether it ought to have put her upon inquiry or not, she did inquire by eminent counsel who searched diligently, who saw the Executive Committee and the chief officers of the Company, who was assured of the validity of the bonds and of Condict's right to dispose of them (fol. 88, 107). Ought she to have seen the President? She did; Condict was then the President. Ought she to have seen the Executive Committtee? She did; she saw Condict and Seaman, a majority of that committee, which then possessed "all the powers" of the Company (fol. 90). The

other member, Mr. Lazare, was at the West (fol. 82). What more could she have done?

It is claimed the Executive Committee possessed at this time no authority whatever. On the contrary, we claim it possessed all the power of the Board.

On the fifth of May, 1870, the Board resolved that the Executive Committee should possess all the powers of the Board as long as the Board was not in session. Thereafter the Board never met until the next annual election, May 3d, 1871, when it adopted new by-laws, one of which provided that the Executive Committee should possess all the powers of authority which, from time to time, might be delegated to it by the Board of Directors; and declared, generally, that "all *by-laws* inconsistent with the foregoing are repealed" (65). But the resolution of 1870, giving the Executive Committee the power of the Board, was not repealed.

And had that resolution been a by-law, it would not have been repealed by the new by-laws, for it was not inconsistent with them. There is nothing inconsistent between a by-law giving an Executive Committee the power the Board might designate and a previous resolution or by-law giving them the power of the Board when the Board was not in session. Until the Board designated their powers the committee continued to hold the general power theretofore given them. And that the Board of 1871 so regarded this, is evident from their action.

For, at their very first meeting after their new by-laws were adopted (67–113), the Board resolved, upon motion of Mr. Condict, that a majority of the Executive Committee should possess all the powers of the Board when not in session.

And the resolution thus passed was, in *totidem verbis*, the same resolution as that passed by the Board of 1870.

That resolution having been passed under, and to carry into effect both by-laws must have accorded with both, and could not have been inconsistent with either.

And, in fact, it seems this Executive Committee did constantly act, and were recognized by the officers of the Company as being authorized to act, for the Company (fols. 62, 63).

Neither Mrs. Sprague, nor her counsel, could know what limitation if any there was on the powers of the Executive Committee, and had a right to assume that they possessed the ordinary powers of persons in that relation; and, finding the "Chief Executive" in possession of these bonds, and being positively assured by him and his co-director—they being also a majority of the Executive Committee—of Condict's power to dispose of them, had a right to assume it.

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